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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,
APPELLANT,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PETITION FOR CERTIORARI FILED AUGUST 17, 1951.
PROBABLE JURISDICTION NOTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC., APPELLANT,

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APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 22, 1951.

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[fol. 1]

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Caption omitted]

[fol. 2] MEMPHIS STEAM LAUNDRY CLEANER, INC.

VS.

A. H. STONE, Chairman of the State Tax Commission of the State of Mississippi

DECLARATION—Filed March 9, 1950

Comes the plaintiff, Memphis Steam Laundry Cleaner, Inc., by its attorneys, and in this its suit against A. H. Stone, Chairman of the State Tax Commission of the State of Mississippi, for cause of action shows unto the court as follows, to-wit:

(1) The Plaintiff is a corporation organized under the laws of the State of Delaware, domiciled at Wellington in said state; that the defendant, A. H. Stone, is chairman of the State Tax Commission of the State of Mississippi, under and by virtue of the laws and statutes thereof, and suable as such.

(2) That the plaintiff owns and operates a large steam laundry and cleaner in the City of Memphis in the State of Tennessee; that it performs the general service of a laundry and cleaner; that it has numerous applications from people in the State of Mississippi for its services; that in order to serve people in the State of Mississippi in counties contiguous to the State of Tennessee, it is sending one truck into each of the counties of Tunica, Coahoma, Marshall, Tate, Quitman and Benton, and sending two trucks into DeSoto and Panola Counties; that such counties are thickly settled with persons desiring plaintiff's laundry and cleaner service. That the plaintiff has not agent, employee, office or place of business in the State of Mississippi; that it renders service to the people in Mississippi in the counties aforesaid by sending a truck in and through municipalities [fol. 3] situated in the aforesaid counties, the driver of

which having no other authority solicits laundry for transportation from persons, firms and corporations to be transported to the plaintiff's plant in Memphis in the State of Tennessee; that such commodities as are desired to be laundered or cleaned are accepted by the driver of said trucks, brought to Memphis and there serviced and returned by the plaintiff's truck driver to the owner thereof; that for such service the plaintiff charges a fair and reasonable charge which is paid by the owner upon the delivery of the commodity in the State of Mississippi.

(3) The plaintiff alleges and avers that the defendant has demanded and required of the plaintiff that it pay a privilege tax of $50.00 per annum upon the driver of each truck soliciting business for the plaintiff's laundry in each and every county in the State of Mississippi where such business is solicited. That the defendant, through its agents, servants and employees, has threatened to attach the property of the plaintiff, consisting of trucks operating in the State of Mississippi, solely and only for the purpose aforesaid; that said demand is made under paragraphs (f) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944. The plaintiff alleges and avers that it is not liable for said privilege tax for the following reasons:

(1) That the plaintiff is not a transient vendor or dealer under the provisions of the above act.

2. If mistaken therein, the plaintiff alleges that such tax is void, unenforceable and uncollectible in that the soliciting and transportation of commodities to Memphis, Tennessee to the plaintiff's plant to be laundered and cleaned and returned to the owner is interstate commerce and not subject to tax under the laws of the State of Mississippi, and, therefore, such tax is void and unenforceable.

[fol. 4] 3. Plaintiff alleges and avers that it does not owe said tax or any part thereof; that the said tax is void, unenforceable and collectible in that under Paragraphs (t) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944, there is levied and demanded of the plaintiff a tax of $50.00 upon each individual person in charge of plaintiff's trucks per annum in each of the aforesaid counties; that, however, under Section 110, Chapter 137, Mississippi Laws of 1944, the tax would be only $8.00 upon each truck or

other vehicle in each county where the same might be operated other than that in which the laundry is located; That is to say that there is demanded and required of the plaintiff a tax of $50.00 per annum for each truck soliciting laundry in the State of Mississippi in each county where said laundry is solicited; whereas, a person situated in the State of Mississippi, soliciting laundry in the State of Mississippi from any municipality where a laundry is not located is only liable for a tax of $8.00. The plaintiff shows unto the Court that said act is void and unenforceable as being in violation of the interstate commerce clause of the Constitution of the United States in that said act creates discrimination between the solicitation of laundry in interstate commerce and the solicitation of laundry in intrastate commerce; that on account of said discrimination said act violates the 14th Amendment to the Constitution of the United States in that the same, by reason of such discrimination, deprives the plaintiff of its property without due process of law and denies to it the equal protection of the law, and for all of said reasons said statute violates the 14th section of the Bill of Rights of the State of Mississippi; that the discrimination complained of is substantial and unreasonable; that the difference between the soliciting and transporting of laundry in intrastate commerce and that of [fol. 5] soliciting for transportation in interstate commerce is an unreasonable classification and rests upon no sound basis and may not be sustained.

Plaintiff further alleges that said statute violates Paragraph 1, Section 2, article 4 of the Constitution of the United States which provides that citizens of each state shall be entitled to all privileges and immunities of citizens of the several states. The plaintiff alleges and avers that uniformly and in all cases its trucks are driving by individuals in the employ of the plaintiff all of whom are nonresidents of the State of Mississippi, residing in Memphis in the State of Tennessee; that said persons come into Mississippi in the operation of said trucks solely for the purpose aforesaid; that the plaintiff has paid all taxes to each county or municipality or taxing district provided in Section 121, Chapter 137, Mississippi Laws of 1944, regardless of its liability therefor.

(4) Plaintiff has this day paid to the defendant the sum of $500.00, being the amount of privilege tax wrongfully and illegally demanded of the plaintiff by the defendant by reason of the aforesaid transactions, which payment has been made by the plaintiff to the defendant for the purpose of preventing the defendant, its agents and servants from arresting plaintiff's agents and employees and seizing its trucks, which action the defendant would otherwise have taken.

Wherefore, the plaintiff files this suit for the purpose aforesaid and demands judgment of the defendant in the sum of $500.00 with interest and costs.

Memphis Steam Laundry Cleaner, Inc., By Watkins & Eager, By J. W. Kirkpatrick & C. E. Clifton, Attorneys.

[File endorsement omitted.]

[fol. 6] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

ANSWER OF THE DEFENDANT—Filed May 1, 1950

Comes the defendant in the above-styled and numbered cause, by his attorney, and in answer to so much and such parts of the declaration filed against him as he is advised it is necessary to answer, answering says:

1

It is admitted that the plaintiff is a corporation organized under the laws of the State of Tennessee, domiciled at Memphis in said state; and that the defendant, A. H. Stone, is Chairman of the State Tax Commission of the State of Mississippi, and under and by virtue of the laws and statutes thereof it is made his duty to administer and enforce the provisions of Chapter 138 of the Mississippi Laws of 1944, known as the State wide privilege Tax Law.

2

It is admitted that the plaintiff owns and operated a large steam laundry and cleaner in the City of Memphis in the State of Tennessee; and that it performs a general service of laundry and cleaner; and it is admitted that it may be true that there is a demand for services of the plaintiff from people in the State of Mississippi. And it is admitted that in order to serve its customers in the State of Mississippi in counties contiguous to the State of Tennessee, it sends trucks from its plant in Memphis into each of the counties of Tunica, Coahoma, Marshall, Tate, Quitman and Benton, and sends two trucks into DeSoto and Panola [fol. 7] Counties, thus making ten trucks which travel in the counties of Mississippi for the sole purpose of soliciting, procuring, and delivering to customers in said counties in Mississippi, laundry and cleaning which it performs for citizens in said counties. It may be true that the plaintiff has no agent, employee, office or place of business in the State of Mississippi, other than its employees who come into Mississippi soliciting, procuring and delivering clothing upon which laundry and cleaning service is rendered, and it is true that it renders service to the people in the Mississippi counties mentioned by sending trucks in and through municipalities situated in said counties, the drivers of which solicit laundry and cleaning for transportation from persons, firms and corporations to be laundered and cleaned, and it may be true that such clothing and articles as it performs service on are transported to the plaintiff's plant in Memphis in the State of Tennessee, that such commodities as are desired to be laundered and cleaned are accepted by the drivers of said trucks and carried to Memphis for service and returned by said trucks to the owner thereof in Mississippi. And it is doubtless true that the plaintiff makes the usual charge for such services and collects same from the owners of the commodities serviced in the State of Mississippi.

3

It is true, as alleged in paragraph 3 of the declaration that the defendant in his capacity as the Commissioner charged with the duty and clothed with the authority of administering said Chapter 138, Laws of 1944, through his duly con-

stituted agents, demanded of the plaintiff that it pay a privilege tax of Fifty Dollars ($50.00) per annum on each truck so employed in the several counties in Mississippi for the collection of and delivery of laundry and claiming solic-
[fol. 8] ited and acquired from customers in Mississippi. And it is admitted that the defendant, through its duly constituted agents and employees, has stated to the plaintiff that it would be his duty to enforce the laws of Mississippi in connection with its activities in Mississippi, the provisions of said law authorizing the defendant to issue his warrant directed to the Sheriff of any county in which such trucks were operating without a license, and that the plaintiff in recognition of the authority and duty of the defendant to enforce the provisions of the law, paid the tax demanded rather than have its property seized and sold for the collection of the tax due. And it is true that said demands were made under paragraphs (t) and (y) of Section 45 of Chapter 138, Laws of Mississippi, said tax being definitely imposed by said sections (t) and (y) of said section of the Privilege Tax Law.

4

In answer to that part of the plaintiff's declaration in which it alleges that it is not due the tax demanded and paid, and answering said allegations seriatim, the defendant says:

(1) That the plaintiff is a transient vendor under the provisions of said Act, which defines the term "transient vendor" under the terms of said statute.

(2) Defendant denies that the tax is void, unenforceable and uncollectible in that the solicitation and transportation of commodities to Memphis, Tennessee to the plaintiff's plant to be laundered and cleaned and returned to the owner, is interstate commerce, and therefore, not subject to tax under the laws of Mississippi. And the defendant denies that the tax is void and unenforceable.

(3) It is denied by the defendant that the plaintiff does not owe said tax or any part thereof; and denies that the
[fol. 9] said tax is void, unenforceable and uncollectible, but alleges that under paragraphs (t) and (y) of Section 45, Chapter 138 of the Mississippi Laws of 1944 plainly imposes a tax of Fifty Dollars ($50.00) for each truck in each county

in Mississippi in which business is solicited and transported out of the State to be serviced, and a charge made for the service rendered on such commodity, which is collected from the owners of said material in Mississippi. While it is true that by Section 110 of Chapter 137, Laws of Mississippi for 1934, a tax of Eight Dollars ($8.00) is levied on each truck operated in any municipality other than where the laundry is located, this is not a discrimination against a nonresident, since the small rate applies for the benefit of those persons maintaining a plant within the state, on which it pays advalorem taxes, service taxes, privileges taxes, and other taxes not borne by the nonresident who sends its representatives into the State and procures commodities to be serviced in competition with the local people who pay to the State of Mississippi these various forms of taxation. And since the legislature has the exclusive authority to classify taxpayers, such classification is not *lawful,* if on a reasonable basis. And therefore, defendant says that the said provision of the law is not unconstitutional and does not violate the Commerce Clause of the Federal Constitution, nor the Constitution of the State of Mississippi.

(4) The defendant admits that as a result of the demand made on the plaintiff it has paid to the defendant the sum of Five Hundred Dollars ($500.00) which is the correct amount of taxes due on the operation of ten trucks in the State of Mississippi, the law imposing a tax of Fifty Dollars ($50.00) on each truck in each county in which it operates. And the tax being lawfully and positively imposed by said law, it was not illegally or wrongfully demanded by the defendant and that the payment thereof was [fol. 10] only in compliance with the plain provisions of the law.

The defendant therefore denies, in toto, all of the allegations of the declaration as to the illegality or wrongful demanding and collection of the tax involved, and respectfully submits to the Court that the plaintiff is not entitled to recover anything by this suit.

A. H. Stone, Chairman of the State Tax Com. By
J. H. Sumrall, Attorney.

[File endorsement omitted.]

[fol. 11] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

FINAL JUDGMENT—June 20, 1950

This day this cause came on to be heard upon the plaintiff's Declaration and the Answer of the defendant thereto:

And it appearing unto the Court that the plaintiff's declaration states a good cause of action and that the Defendant's answer admits the allegations of fact therein contained and constitutes no defense to the plaintiff's suit, and the court being of the opinion that the plaintiff should recover,

It is ordered and adjudged by the Court that the plaintiff, the Memphis Steam Laundry Cleaners, Inc. does have and recover of and from A. H. Stone, Chairman of the State Tax Commission, the sum of Five Hundred ($500.00) Dollars with the costs of the court to be taxed.

Ordered and adjudged this the 20 day of June 1950.

M. M. McGowan.

[fol. 12] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

To the Hon. H. T. Ashford, Jr., Circuit Clerk, Hinds County:

PETITION FOR APPEAL—Filed July 5, 1950

Comes A. H. Stone, Chairman of the State Tax Commission who as the Commissioner, was sued by the Memphis Steam Laundry Cleaner, Inc., Number 12563 on the docket of the First District of Hinds County; and petitions for an appeal to the Supreme Court of Mississippi from the judgment rendered against him in said cause on June 20, 1950.

Your petitioner would show that a judgment having been rendered against him in his official capacity, he is entitled to an appeal with supersedeas, without the filing of a bond,

under the provisions of Sec. 1210 of the Mississippi Code of 1942.

Petitioner therefore requests that the record in said cause be prepared and forwarded to the Clerk of the Supreme Court of Mississippi as early as possible, in order that this case may be reached on the docket of the Supreme Court at the earliest time possible.

Respectfully submitted: A. H. Stone. By J. H. Sumrall, Attorney.

[File endorsement omitted.]

[fol. 13] IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 37,960

A. H. STONE, Chairman State Tax Commission, Appellant,

vs.

MEMPHIS STEAM LAUNDRY CLEANERS, INC., Appellee

ASSIGNMENT OF ERRORS

The appellant respectfully submits that in the trial of this cause in the lower Court, the following errors were committed, to-wit:

I

The lower Court erred in holding that the Appellee, the plaintiff in the lower Court, was "not a transient vendor" as contemplated by the law involved.

II

The lower Court erred in holding that the taxes collected by the appellant, the defendant in the lower Court, were improperly collected.

III

The lower Court erred in awarding judgment for the Appellee, the plaintiff in the lower Court.

IV.

The lower Court was without jurisdiction to entertai this suit, because the action was in effect a suit against th [fol. 14] State, and the statutory method by which the Stat permits suits to be brought against it were not followed.

V.

The lower Court erred in awarding judgment against th appellant, A. H. Stone, the defendant in the lower Court since the amount of taxes sued for had been paid into th State Treasury as required by law, before the suit was filed

VI

And for other errors to be made known on the hearing

Respectfully submitted: (S.) J. H. Sumrall, At torney for Appellant.

Certificate of service (omitted in printing).

[fol. 15] IN THE SUPREME COURT OF MISSISSIPPI

No. 37,960

Division B. Arrington, C.

A. H. STONE, Chairman, State Tax Commission,

vs.

MEMPHIS STEAM LAUNDRY CLEANER, INC.

(OPINION RENDERED JUNE 11, 1951)

This suit was filed by the appellee, Memphis Steam Laundry Cleaner, Inc., a foreign corporation located in Memphis, Tennessee, to recover $500.00 for privilege taxes previously paid by it to A. H. Stone, Chairman State Tax Commission of the State of Mississippi. The suit was tried by the lower court on declaration and answer and judgment rendered for appellee, from which judgment the appellant appeals.

It is admitted that the appellee was sending ten trucks into eight counties in Mississippi soliciting laundry, which it carried to Memphis, serviced and returned, and upon which a privilege tax of $50.00 was paid on the driver of each truck. This appeal involves the construction of Section 45, subsections (t) and (y), Chapter 138, Laws of Mississippi of 1944, known as the state-wide privilege tax law. Section 3 of this act provides:

"Every person desiring to engage in any business, or exercise any privilege hereafter specified shall first, before commencing same, apply for, pay for, and pro- [fol. 16] cure from the state tax commissioner or commissioner of insurance, a privilege license authorizing him to engage in the business or exercise the privilege specified therein, and the amount of tax shown in the following sections is hereby imposed for the privilege of engaging or continuing in the business set out therein."

Section 45 of said act provides:

"Upon each person doing business as a transient vendor, or dealer, as defined in this section, and upon which a privilege tax is not specifically imposed by another section of this act, a tax for each county according to the following schedules:

. . . (t) Upon each person soliciting business for a laundry not licensed in this state as such, in each county . . . $50.00

. . . (y) Provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business."

The appellee contends that it is not liable for the tax on the following grounds:

"Point I. Neither the appellee nor the drivers of its trucks were transient vendors or dealers under Paragraphs (t) and (y), Section 45, Mississippi Laws of 1944 as defined in said act. If the paragraphs of said

statute or either of them shall be construed and enforced in this case as to render the appellee liable for the tax sought to be recovered in this case, the said paragraphs and each of them violate the interstate commerce clause of the Constitution of the United States because the [fol. 17] appellee and its agents and servants were engaged solely in Interstate Commerce and said paragraphs and each of them discriminate against interstate commerce in that under Section 110, Chapter 137, Mississippi Laws of 1944, a tax of only $8.00 would be imposed upon a truck operating exclusively in the State of Mississippi.

"Point II. Paragraphs (t) and (y), Section 45, Chapter 138, Mississippi Laws of 1944, if construed as to impose liability on the appellee in this case, violate the 14th Amendment to the Constitution of the United States in that the appellee would thereby be denied the equal protection of the law, as well as due process, and for the same reason said paragr-phs and each of them, would violate the 14th Section of the Bill of Rights of the State of Mississippi."

We are of the opinion that there is no merit in the contention that the appellee is not liable for the tax for the reason that its drivers are not transient vendors or dealers, Section 110 of Chapter 137, Laws of Mississippi 1944, local Privilege Tax Law, for the benefit of counties and municipalities, provides:

"Laundries, Sec. 110, Upon each person operating a laundry other than a hand laundry as follows:

In municipalities of class 1	$120.00
In municipalities of class 2	80.00
In municipalities of classes 3 and 4	60.00
In municipalities of classes 5, 6, 7 and elsewhere in the county	32.00
Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located	8.00"

[fol. 18] The appellee contends that by reason of the above section, which permits resident and licensed laundries to

operate a truck in a municipality other than where the laundry is located by paying a tax of $8.00, and requiring it to pay a tax of $50.00, discriminates against interstate commerce. The legislature, in making this classification which is reasonable, no doubt took into consideration the fact that local laundries were required to pay ad valorem, privilege, and many other taxes. The tax involved here is not a tax on interstate commerce, but a tax on a person soliciting business for a laundry not licensed in this state, a local activity which applies to residents and non-residents alike.

In the case of Craig v. Mills, 203 Miss. 692, 33 So. 2d 801, which case involved privilege taxes and where similar questions were involved, the Court said:

> "From its very nature the business of taking photographs is essentiall- localized in character. The customer, the photographer, and the camera used by him must of necessity be in the state where the photograph is taken. Moreover the tax is not laid upon the transmission of the exposed negative from Mississippi to Tuscaloosa, Alabama, in the instant case, nor upon the return of the finished product to the customer in interstate commerce. It is levied upon the local activity of taking photographs in this state which are to be thereafter developed outside of the state. The interstate commerce does not begin until after the work of the photographer in taking the negative is completed. The taking of such negative is not Commerce, but is merely a step in the preparation therefor and which is taken by one engaged in a particular calling or profession [fol. 19] in this state . . . As supporting the view that such a tax may be imposed upon the business of the appellees, in so far as the local activity of appellees' photographer is concerned, the principles announced in the following cases are likewise applicable:
>
> Brown-Forman Co. v. Kentucky, 217 U. S. 563, 573, 30 S. Ct. 578, 54 L. Ed. 883; Utah Power & Light Co. v. Pfost, 286 U. S. 165, 52 S. Ct. 548, 76 L. Ed. 1038, 1045-1947; Smith v. Jackson, 103 Tenn. 673, 54 S. W. 981, 47 L.R.A. 416; Willis, Constitutional Laws, p. 312; and Stone v. General Electric Contracts Corp., 193 Miss. 317, 7 So. 2d 811, Coverdale v. Arkansas-Louisiana

Pipe Line Co. 303 U. S. 604, 58 S. Ct. 736 L. Ed. 1043; McGoldtrick v. Berwind-White Coal Mining Co., 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A.L.R. 876; Oliver Iron Mining Co. v. Lord, 262, U. S. 172, 43 S. Ct. 526, 67 L. Ed. 929."

This tax does not violate the 14th Amendment of the Constitution of the United States or the 14th Amendment of the Constitution of the State of Mississippi. In Craig v. Mills, supra, the Court held:

"The courts cannot require the legislature to specify its reasons for a classification of persons, firms, or corporations for tax purposes, but they should always presume that the legislature acted on legitimate grounds of distinction, if such grounds exist. And one who assails the classification of a statute "must carry the burden of showing that it is not based on any reasonable basis. It is presumed that the legislature in making discriminations in classifications in statutes bases them on adequate grounds."

[fol. 20] In Notgrass Drug Company et al. v. State, ex rel Rice, Attorney General, 175 Miss. 358, 165 So. 884, the Court said:

"But the applicant says that the classification and exemptions here provided violate the due process clause of the State Constitution (Section 14), and the equality and due process clause of the State Constitution (Section 14), and the equality and due process clauses of the Fourteenth Amendment to the Federal Constitution.

" 'The principles which govern the decision of this clause are well settled. The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings or occupation . . . . The fact that a statute

discriminates in favor of a certain class does not make it arbitrary, if the discrimination is founded upon a reasonable distinction, . . . or if any state of facts reasonably can be conceived to sustain it . . . It is not the function of this Court in cases like the present to consider the propriety or justness of the tax to seek for the motives, or to criticize the public policy which prompted the adoption of the legislation. Our duty is to sustain the classification adopted by the [fol. 21] Legislature if there are substantial differences between the occupations separately classified. Such differences need not be great.' State Board of Tax Commissioners of Indiana v. Lafayette A. Jackson, 283 U. S. 527, 51 S. Ct. 540, 543, 75 L. Ed. 1248, 73 A.L.R. 1464.

"In imposing the tax here under consideration the Legislature has the right to classify persons and commodities subject thereto. 'In its discretion it may tax all, or it may tax one or some, taking care to accord to all in the same class equality or rights.' . . . ."

We think the questions involved here ar answered in the case of Caskey Baking Co. v. Virginia, 313 U. S. 117, 85 L. Ed. 1223, where the Court said in part:

"In the State courts, and here, the appellant challenged the statute as contravening the commerce clause and the equal protection clause of the federal Constitution. Its position is that it is doing either an interstate business which the State may not burden by imposing a license tax, or in intrastate business as to which the exaction works a forbidden discrimination. We hold both contentions untenable.

"1. While the transportation of bread across the state line is interstate commerce, that is not the activity which is licensed or taxed. The purely local business at peddling is what the Act hits, and irrespective of the [fol. 22] source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts. The appellant, however, urges that the Act discriminates against interstate commerce by exempting from its operation the privilege of sales by manufacturers paying tax on

their capital employed in manufacture in Virginia. It is said that if its baker were situated in Virginia and the appellant would have the benefit of this exemption and, since it is not, the marketing of appellant's goods shipped into the State is the target of a hostile discrimination. But the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the state, or buy or procure them from extra-state sources, are alike subject to the Act. The contention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions . . . . As the court below points out, were it not for Sec. 192b, such peddlers would be the only vendors in Virginia to escape some form of taxation.

"Peddlers at wholesale are not entitled to be licensed and taxed on the same basis as other vendors, as respects either form or amount. As we have repeatedly held, the equal protection clause of the Fourteenth Amendment does not prevent a State from classifying business for taxation or impose any iron rule of [fol. 23] equality. Some occupations may be taxed though others are not. Some may be taxed one rate, others at a different rate. Classification is not discrimination. It is enough that those in the same class are treated with equality. This is true here."

Reversed and judgment entered here for appellant.

Per Curiam. The above opinion is adopted as the opinion of the Court, and for the reasons therein indicated, the judgment of the court below is reversed and judgment entered here for appellant.

[fol. 24] IN SUPREME COURT OF MISSISSIPPI

No. 37,960

A. H. STONE, Chairman State Tax Comm.

vs.

MEMPHIS STEAM LAUNDRY CLEANER, INC.

JUDGMENT

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Hinds County, First District, and this court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 24th day of June 1950, be and the same is hereby reversed and this court now, here, proceeding to render and enter the judgment that should have been entered in the court below doth order and adjudge that the appellee take nothing by its suit and that the appellant do have and recover of and from the appellee all of the costs of this court and in the court below to be taxed, etc.

[fol. 25] IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER OVERRULING SUGGESTION OF ERROR—July 9, 1951

We, the undersigned Judges, are of the opinion that the Suggestion of Error filed in the above styled cause on June 25, 1951, should be and the same is hereby overruled.

J. P. Alexander, W. G. Roberds, Lee D. Hall, R. O. Arrington, J. G. Holmes.

[fol. 26] IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

PETITION FOR APPEAL—Filed July 25, 1951

To the Honorable the Supreme Court of the State of Mississippi, Division B:

The appellant, considering itself aggrieved by the final decree and judgment of this Court, entered June 11, 1951, plaintiff-appellant, Memphis Steam Laundry Cleaner, Inc., does hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof, for the reasons set forth in the accompanying assignment of errors; that citation be issued in accordance with law; that order be made with respect to the appeal bond to be given by said plaintiff-appellant, and that the amount of security be fixed by the order allowing the appeal, and that the material parts of the record, proceedings and papers upon which said final judgment and decree was based, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, Wm. H. Watkins, Counsel for Memphis Steam Laundry Cleaner, Inc., plaintiff-appellant.

[File endorsement omitted.]

[fol. 27] IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 25, 1951

The Memphis Steam Laundry Cleaner, Inc., plaintiff-appellant, has made and filed its petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this Court, entered June 11, 1951, suggestion of error overruled July 13, 1951, and

from each and every part thereof, and having presented its assignment of errors and prayer for reversal and its statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and is hereby allowed as prayed for.

It is ordered that the amount of the appeal bond be and the same is hereby fixed at the sum of Five Hundred ($500) Dollars, with good and sufficient security and shall be conditioned as may be required by law.

It is ordered that citation shall issue in accordance with law.

July 20, 1951.

Harvey McGehee, Chief Justice of the Supreme Court of Mississippi.

[File endorsement omitted.]

[fol. 28] Bond on Appeal for $500.00 approved and filed July 25, 1951 omitted in printing.

[fol. 29] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed July 25, 1951

The Memphis Steam Laundry Cleaner, Inc., plaintiff-appellant in the above-entitled cause in connection with its appeal to the Supreme Court of the United States, hereby files the following assignment of errors upon which it will rely in its prosecution of said appeal from the final judgment of the Supreme Court of the State of Mississippi, date June 11, 1951, suggestion of error overruled July 13, 1951.

1. The Supreme Court of the State of Mississippi erred in holding that the activities of the Memphis Steam Laun-

dry Cleaner, Inc., plaintiff-appellant in the State of Mississippi were local and interstate in character and subject to state taxation.

2. The Supreme Court of the State of Mississippi erred in holding that Paragraph (t) and Paragraph (y), Section 45, Chapter 138, Mississippi laws of 1944 were consistent and did not violate the interstate commerce clause of the Constitution of the United States.

3. The Supreme Court of the State of Mississippi erred in holding that Paragraph (t) and Paragraph (y) Section 45, Mississippi laws of 1938 did not discriminate against interstate commerce and that under Section 110, Chapter 137, Mississippi laws of 1944 a tax of only $8.00 would be imposed upon a truck operating exclusively in [fol. 30] the State of Mississippi and performing identical services as that of the plaintiff-appellant.

4. The Supreme Court of the State of Mississippi erred in enforcing and construing Paragraph (t) and Paragraph (y) Section 45 Chapter 138, Mississippi laws of 1944 as to violate the commerce clause of the Constitution of the United States.

5. The Supreme Court of the State of Mississippi erred in construing and enforcing Paragraph (t) and Paragraph (y) Section 45 Mississippi laws of 1938 as to create discrimination between interstate and intra-state commerce.

6. The Supreme Court of the State of Mississippi erred in failing and refusing to affirm the judgment of the Circuit Court, First Judicial District of Hinds County, Mississippi, wherein it was held that the palintiff-appellant was subject to the tax imposed in Paragraph (t) and Paragraph (y) Section 45, Mississippi laws of 1944.

7. The Supreme Court of the State of Mississippi erred in reversing the judgment of the Circuit Court, First Judicial District, Hinds County, Mississippi and in dismissing the suit of the plaintiff-appellant, it appearing that the plaintiff-appellant was engaged in interstate commerce and its activities not subject to taxation.

8. The Supreme Court of the State of Mississippi erred in holding that the State of Mississippi might levy a privilege tax upon the plaintiff-appellant as a condition precedent to engaging in interstate commerce in the State of Mississippi.

9. The Supreme Court of the State Mississippi erred in holding that the statutes of the State of Mississippi referred to were valid and might be enforced against the plaintiff-appellant though discriminating against interstate commerce.

[fol. 31] 10. The Supreme Court of the State of Mississippi committed error in holding that paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944 were consistent with the Fourteenth Amendment to the Constitution of the United States providing that no person should be denigd due process of law or the equal protection of the law.

11. The Supreme Court of the State of Mississippi committed error in holding that paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944 did not violate the Fourteenth Amendment to the Constitution of the United States providing that the State should not deprive any person of due process of law or deny to any person the equal protection of the law.

12. Other causes to be shown at the hearing.

Wherefore plaintiff-appellant prays that the final decree of the Supreme Court of the State of Mississippi be reversed and for such other reasons as the Court may deem fit and proper.

July 20, 1951.

Wm. H. Watkins, Counsel for Memphis Steam Laundry Cleaner, Inc., Plaintiff-appellant.

[fol. 32] Citation in usual form showing service on J. H. Sumrall omitted in printing.

[fols. 33-35] Statement required by rule 12 of the rules of the Supreme Court of the United States: (omitted in printing).

[fols. 36-37] Praecipe (omitted in printing).

[fol. 38] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 39] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed October 16, 1951

(a) Pursuant to Rule 13, Paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The activities of the appellant in Mississippi were not of local character but were interstate commerce.

2. Paragraph (t) and (y), Section 45, Mississippi Laws of 1944, as construed by the Supreme Court of Mississippi in this case violates paragraph 3, Section 8 of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian Tribes. In that the appellant was required to pay a privilege tax of $50.00 upon each truck as a condition precedent to engaging in interstate commerce between Memphis, Tennessee and points in the state of Mississippi.

4. Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, violate paragraph 3, Section 8, constitution of the United States providing that Congress shall have power to regulate interstate commerce in that the sections of said Act create discrimination between intra-[fol. 40] state and interstate commerce by reason of the fact that a person transacting such activity entirely within the State of Mississippi, under Section 110, Chapter 137, Mississippi Laws of 1944 would pay only $8.00 on each truck and that appellant was required to pay $50.00 per truck in carrying on the same occupation.

4. Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, violate Section 1 of the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of life, liberty, and property without due process of law, now deny to any person within its jurisdiction the equal protection of the law; for that a person carrying on the same activity within the State of Mississippi as appellant does in interstate

Commerce, was required to pay only a tax of $8.00 per truck whereas the appellant was required to pay a tax of $50.00 upon each truck while engaged in same occupation.

5. The tax imposed on the appellant in this case by the Supreme Court of Mississippi may not be justified on the ground that appellant was a transit vendor for that an activity in interstate commerce may not be labeled as a local activity thereby depriving the appellant of rights created and protected by the Constitution of the United States.

(b) Appellant designates the entire record, as filed in the above entitled case, for printing by the Clerk of this Court.

W. H. Watkins, C. E. Clifton, P. H. Eager Jr., Thos. H. Watkins, Attorneys for Appellant.

[fol. 41] Certificate of Service (omitted in printing).

[fol. 42] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 253

[Title omitted]

ORDER—October 8, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Office-Supreme Court, U. S.
FILED
AUG 17 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,
Appellant,

vs.

A. H. STONE, Chairman, State Tax Commission of Mississippi

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

STATEMENT AS TO JURISDICTION

C. E. Clifton,
W. H. Watkins,
P. H. Eager, Jr.,
Thomas H. Watkins,
Counsel for Appellant.

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 37,960

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION,

vs.

MEMPHIS STEAM LAUNDRY CLEANER, INC.

DIVISION B

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States as amended, plaintiff-appellant submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the Judgment of the Supreme Court of the State of Mississippi entered in this cause.

Opinion Below

The opinion of the Supreme Court of the State of Mississippi in this case is reported — So. page —, a copy of the opinion of the Supreme Court of Mississippi is hereto attached as Appendix "1" to this statement.

Jurisdiction

The judgment of the Supreme Court of the State of Mississippi was entered on June 11, 1951, the plaintiff-appellants suggestion of Error was overruled July 13, 1951, a petition for appeal to the Supreme Court of the United

States presented to the presiding judge of the Supreme Court of the State of Mississippi, Division B thereof, to-wit, on the 20 day of July, 1951. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is confirmed by Title 28, United States Code, Section 1257 (a).

The following decisions sustain jurisdiction of the Supreme Court of the United States to review the judgment on direct appeal in this case.

Nippert v. *City of Richmond*, 327 U. S., 416, 90 L. Ed. 760;

Davis v. *Virginia*, 236 U. S. 697, 59 L. Ed. 795;

Caldwell v. *State of North Carolina*, 187 U. S. 622, 47 L. Ed. 336;

Dozier v. *State of Alabama*, 218 U. S. 124, 54 L. Ed. 695;

Craig v. *Mills*, 33 So. (2d) 801, 203 Miss. 692;

Crutcher v. *Kentucky* (1891), 141 U. S. 47, 35 L. Ed. 649;

Webber v. *Virginia* (1880), 103 U. S. 34, 26 L. Ed. 565;

Robbins v. *Tax District of Shelby County*, (Tenn.) 120 U. S. 489, 30 L. Ed. 964;

William G. Asher v. *State of Texas*, 128 U. S. 129, 32 L. Ed. 368;

International Textbook Co. v. *Pigg*, 217 U. S. 91, 54 L. Ed. 678;

Spector Motor Service, Inc., v. *O'Connor, Tax Commissioner*, 95 L. Ed. Advance Sheets, page 435.

The Precise Question Involved

The questions involved in this case and presented to the court for its decision are as to whether or not paragraphs (t) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944, violate Article I, Paragraph (3), Section (8) of the Constitution of the United States providing that Con-

gress shall have power to regulate commerce with foreign nations and among the several states and with the Indian Tribes, and as to whether or not such paragraphs of Section 45 Violate Section (1) of the 14th Amendment to the Constitution of the United States providing that no state shall deprive any persons of life, liberty and property without due process of law nor deny to any person within its jurisdiction the equal protection of the law.

The Supreme Court of Mississippi held that the sections were valid and did not violate either the commerce clause or the 14th Amendment to the Constitution of the United States.

The Questions Involved Are Substantial

Statement

The facts in the case appear from the pleadings and are undisputed. Upon the 9th day of March, 1950, the Memphis Steam Laundry Cleaner, Inc. exhibited its declaration in the Circuit Court, First Judicial District, Hinds County, Mississippi (R. 2-5.[1]). The appellant's declaration alleged that it is a foreign corporation organized under the laws of the State of Delaware and is engaged in operating a steam laundry and cleaner. Having received applications from persons in the State of Mississippi for its service, it sends trucks into the State of Mississippi soliciting laundry and cleaning service. It at no time had an office, place of business, agents, employees or officers in the State of Mississippi. That it solicits and renders service to people in Mississippi in ten counties immediately adjoining the City of Memphis by sending trucks through municipalities situated in said counties. The drivers of said trucks have no authority other than to solicit laundry for transportation from persons desiring such service, to be transported to appellant's plant in Memphis, Tenn., and such com-

modities, as are delivered to its truck drivers are brought to Memphis, serviced and returned to the owners thereof in the State of Mississippi, whereupon the truck driver collects a reasonable charge for such service upon the delivery of the Commodity in the State of Miss. no part of which service is rendered in the State of Miss., all of which is had in Memphis, in the State of Tenn. The appellant sent ten trucks into the State of Miss. whereupon the appellee, A. H. Stone, Chairman of the State Tax Commission demanded of appellant the sum of $50.00 per annum upon the driver of each truck soliciting laundry to be transported to Memphis, Tenn. for the purposes aforesaid. That the appellee threatened to attach the property of the appellant and have its truck drivers arrested and criminally prosecuted unless the tax should be paid (R. 2-3): That said tax was demanded under paragraph (t) and (y) Section 45, Chapter 138, Miss. Laws of 1944 which levied a tax upon a person soliciting business for a laundry not licensed in the State, said subdivision (t) being in the following language:

> "Upon each person soliciting business for a laundry not licensed in this state as such, in each county . . . $50.00

In Paragraph (y) Section 45, the following provision is contained:

> "Provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business."

A copy of Section 45, Mississippi Laws of 1944 is hereto attached and made Appendix (2) to this statement. That by reason thereof, since the appellant sent ten trucks in the counties in the State of Mississippi continuous to Memphis, Tennessee, a tax of $50.00 on each truck or

$500.00 per annum was demanded. The appellant alleged that it was not liable for such tax, first because its activities were in interstate commerce and not subject to local taxation. Second, it alleged that it was not liable because Chapter 137 Section 110, Mississippi Laws of 1944, imposed a tax of only eight dollars ($8.00) upon each truck rendering the same service for laundry located in the State of Mississippi, said Section 110, containing the following language:

> "Upon each person operating a laundry other than a hand laundry, as follows:
>
> | | |
> |---|---|
> | In municipalities of class 1 | $120.00 |
> | In municipalities of class 2 | $ 80.00 |
> | In municipalities of class 3 and 4 | $ 60.00 |
> | In municipalities of classes, 5, 6, 7 and elsewhere in the county | $ 32.00 |
> | Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located | $ 8.00" |

A copy of said Chapter 137 Section 110, Mississippi Laws of 1944 is made Appendix "3" to this statement. The appellant alleged and averred that subdivisions (t) and (y) Section 45, Mississippi Laws of 1944 create a discrimination between intrastate and interstate commerce and therefore said sections (t) and (y) are void and unenforceable and the tax was not collected.

Third, the appellant alleged and averred that on account of such discrimination as between laundry located out of the State of Mississippi and domestic laundry (Sections (t) and (y) of the Section 45 of the Mississippi Laws of 1944 violate the Fourteenth Amendment to the Constitution of the United States in that by reason of such discrimination deprived the appellant of its property without process of law and denied to it equal protection. R. 3, 4, and 5.

The appellant alleged that while it was not liable to the State of Mississippi for taxes by reason of the interstate nature of its transactions, the appellant paid to the proper taxing authorities required of a domestic corporation under Section 110, Chapter 137, Mississippi Laws of 1944 the sum of eight dollars ($8.00) on each truck. r-5. The declaration alleged that the plaintiff paid the tax of five hundred dollars ($500.00), fifty dollars ($50.00) on each of ten trucks in order to prevent the arrest of its agents and servants coming in the State of Mississippi for interstate purposes and the seizure of its trucks. Judgment was prayed for in the sum of five hundred dollars ($500.00). The appellee filed an answer to the appellants declaration. r-6-10. There was no denial on the part of appellee of any facts alleged in the plaintiffs' declaration. The case was tried before the Circuit Judge upon the undenied facts contained in appellants declaration with the result that upon the 20th day of June, 1950 judgment was rendered in favor of the appellant against the appellee for the sum demanded. The trial court held that the appellants activities were interstate in character and rendered a judgment in appellants favor for the sum of five hundred dollars ($500.00). r-11. The appellee prosecuted an appeal to the Supreme Court of Mississippi and upon the 11th day of June, 1951 the Supreme Court of Mississippi reversed the decision of the trial court, held that the activities of the appellant were not in interstate commerce, were local in nature, were free from discrimination, reversed the judgment of the lower court and entered a final judgment dismissing appellants declaration. The Court in doing so assumed as true the facts alleged in appellants declaration and stated herein. This appeal is from the judgment of the Supreme Court of Mississippi reversing the judgment of the trial court.

ARGUMENT

Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944 are void as a tax upon interstate commerce and in addition constitute a discriminatory tax as between interstate and intrastate commerce in that the operator of a truck serving a domestic laundry, regardless of the distance traversed would only be subject to a tax of $8.00 per truck.

Therefore, it necessarily appears that the statutes in question violate both the interstate commerce clause of the Constitution of the United States and the 14th Amendment of the Constitution of the United States and that the appellant is deprived of his property without due process and is denied equal protection under the law.

The questions are fairly and fully presented in appellant's declaration filed in the state court. R. 3, 4, and 5 contains the following language:

The Question How Presented

"2. If mistaken therein, the plaintiff alleges that such tax is void, unenforceable and uncollectible in that the soliciting and transportation of commodities to Memphis, Tennessee to the plaintiff's plant to be laundered and cleaned and returned to the owner is interstate commerce and not subject to tax under the laws of the State of Mississippi, and therefore, such tax is void and unenforceable.

3. Plaintiff alleges and avers that it does not owe said tax or any part thereof; that the said tax is void, unenforceable and collectible in that under Paragraphs (t) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944, there is levied and demanded of plaintiff a tax of $50.00 upon each individual person in charge of plaintiff's trucks per annum in each of the aforesaid counties; that, however, under Section 110, CH. 127, Mississippi laws of 1944, the tax would be only

$8.00 upon each truck or other vehicle in each county where the same might be operated other than that in which the laundry is located: That is to say that there is demanded and required of the plaintiff a tax of $50.00 per annum for each truck soliciting laundry in the State of Mississippi in each county where said laundry is solicited; whereas a person situated in the State of Mississippi, soliciting laundry in the State of Mississippi from any municipality where a laundry is not located is only liable for a tax of $8.00. The plaintiff shows unto the Court that said act is void and unenforceable as being in violation of the interstate commerce clause of the Constitution of the United States in that said act creates discrimination between the solicitation of laundry in interstate commerce and the solicitation of laundry in intrastate commerce; that on account of said discrimination said act violates the 14th Amendment to the Constitution of the United States in that the same, by reason of such discrimination, deprives the plaintiff of its property without due process of law and denies to it the equal protection of the law, and for all of said reasons said statute violates the 14th section of the Bill of Rights of the State of Mississippi; that the discrimination complained of is substantial and unreasonable; that the difference between the soliciting and transporting of laundry in intrastate commerce and that of soliciting for transportation in interstate commerce is an unreasonable classification and rests upon no sound basis and may not be sustained."

The opinion of the Supreme Court of Mississippi expressly recognizes that the appellant challenged the constitutionality of Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944 as being violative of the interstate commerce clause of the Constitution of the United States and that the appellant challenged said subdivisions of Section 45 Mississippi Laws of 1944 as creating a discrimination in favor of intrastate commerce

as against interstate commerce, thereby violating interstate commerce clause of the Constitution of the United States, as well as the 14th Amendment of the Constitution of the United States in the particulars mentioned and the decisions of the court was in favor of the validity of the Mississippi statutes thus challenged and an express denial of the appellant's contentions.

The question is, therefore, squarely presented as to whether or not the activities of the appellant in the State of Mississippi constituted interstate commerce and as to whether or not Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, and Section 110, Chapter 137, Mississippi Laws of 1944, discriminate against interstate commerce and violate the 14th Amendment to the Constitution of the United States. The court held that the appellant was liable for the tax provided under Paragraphs (t) and (y) of the act and dismissed the appellant's suit to recover the tax, which it would otherwise have been entitled to recover if the appellant's contentions in respect to the unconstitutionality of the acts involved are correct.

The following authorities establish that the tax which the appellant was required to pay was a direct burden upon interstate commerce and a discrimination between interstate and domestic commerce.

The latest opinion from the Supreme Court of the United States is that of Spector Motor Service, Inc., v. O'Connor, Tax Commissioner, decided March 26, 1951, and found in 95 L. ed. Ad. Sheets, page 435. In that case it appeared that the appellant was engaged in interstate transportation through the state of Connecticut. It was authorized so to do by the Interstate Commerce Commission and the Connecticut Utilities Commission. It had filed a certified copy of its Charter with the Secretary of State of the State of Connecticut, appointed an agent for service of process. It did no intrastate business in Connecticut. It would

transport interstate shipment into Connecticut, pick up property in Connecticut for interstate shipment. The Supreme Court of Connecticut held that it was subject to the same franchise of being engaged in intrastate commerce. The Supreme Court of the United States held otherwise, reversed the judgment of the Supreme Court of Connecticut, using the following language:

> "Taxing power inherent in sovereign states, yet the states of the United States have divided their taxing power between the Federal Government and themselves. They delegated to the United States the exclusive power to tax the privilege to engage in interstate commerce, when they gave Congress the power 'to regulate Commerce with foreign Nations and among the several states' . . . U. S. Const. Art. 1, Sec. 8, Cl. 3. While the reach of the reserved taxing power of a state is great, the constitutional separation of the federal and state powers makes it essential that no state be permitted to exercise without authority from Congress those functions which it has delegated exclusively to Congress . . . "
>
> "This Court heretofore has struck down, under the commerce cause, state taxes upon the privilege of carrying on a business that was exclusively interstate in character. The constitutional infirmity of such a tax persists no matter how fairly it is apportioned to business done within the State. Alpha Portland Cement Co. v. Mass., 268 U. S. 203, 69 L. ed. 916, 45 S. Ct. 477, 44 ALR 1219 (measured by percentages of 'corporate excess' and net income); Ozark Pipe Line Corp. v. Monier, 266 U. S. 555, 69 L. ed. 439 St. Ct. 184 (measured by percentage of capital stock and surplus)."

In the case of *Nippert* v. *City of Richmond*, 327 U. S. 416, 90 L. ed. 760, an ordinance of the City of Richmond laid a tax upon persons soliciting orders for merchandise to be shipped from out of the state. No separate tax was laid

in respect to intrastate business. The Supreme Court of the United States held that the tax was illegal using the following language:

> "The tax here in question inherently involved too many probabilities, and we think actualities for exclusion of or discrimination against interstate commerce, in favor of local competing business, to be sustained in any application substantially similar to the present one. Whether or not it was so intended, those are its necessary effects. Indeed, in view of that fact, and others of common knowledge, we cannot be unmindful, as our predecessors were not when they struck down the drummer taxes, that these ordinances lend themselves peculiarly to creating those very consequences or that in fact this is often if not always the object of the local commercial influences which induce their adoption. Provincial interests and local political power are at their maximum weight in bringing about acceptance of this type of legislation. With the forces behind it, this is the very kind of barrier the commerce clause was put in the fundamental law to guard against * * *".

The case of *Best & Co. v. Maxwell*, 311 U. S. 454, 85 L. ed. 275, is directly in point. In that case the appellant, a New York retail merchant displayed samples in a hotel room in North Carolina, taking orders for goods corresponding to the samples to be filled by shipping direct to the customer from New York City. The appellant was obliged to pay a tax of $250 levied on every person or corporation not a retail merchant in the state displaying samples in any hotel room rented or occupied temporarily for the purpose of securing retail orders. The appellant was not a regular retail merchant and paid the tax under protest and sued to recover same asserting that the act was unconstitutional. Recovery was held in the trial court which the Supreme Court of North Carolina reversed. In reversing

the judgment of the Supreme Court of North Carolina, the Supreme Court of the United States used the following language:

> "The only corresponding fixed-sum license tax to which appellant's real competitors are subject is a tax of $1 per annum for the privilege of doing business. Nonresidents wishing to display their wares must either establish themselves as regular North Carolina retail merchants at prohibitive expense, or else pay this $250 tax that bears no relations to actual, probably sales but must be paid in advance no matter how small the sales turn out to be. Interstate commerce can hardly survive in so hostile an atmosphere. A $250 investment in advance, required of out-of-state retailers but not of their real local competitors, can operate only to discourage and hinder the appearance of interstate commerce in the North Carolina retail market. Extra-state merchants would be compelled to turn over their North Carolina trade to regular local merchants selling by sample. North Carolina regular retail merchants would benefit, but to the same extent the commerce of the Nation would suffer discrimination.
>
> The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businesses, whatever may be the ostensible reach of the language.
>
> Judgment reversed".

The case of *Breenon* v. *City of Titusville*, 153 U. S. 289, 38 L. ed. 719, is directly in point.

In the case of *Crenshaw* v. *State of Arkansas*, 227 U. S. 389, 57 L. ed. 565, the appellants, Crenshaw and Galloway were convicted under statutes of the State of Arkansas which imposed a tax of $200 for selling or peddling samples for ranges, and took orders therefor, Crenshaw acted as delivery man, delivered ranges to persons who had pre-

viously given orders. The appellants were convicted for not having purchased a license and were held by the Supreme Court of the State of Arkansas to be peddlers. The Supreme Court of the United States in reviewing the case cited with approval *Robbins* v. *Taxing District*, 30 L. ed. 694, 120 U. S. 489; *Brennon* v. *Titusville*, 153 U. S. 289, 38 L. ed. 719; *Caldwell* v. *North Carolina*, 187 U. S. 22, 47 L. ed. 336; *Rearick* v. *Pa.*, 203 U. S. 507, 51 L. ed. 295; *Dozier* v. *Alabama*, 218 U. S. 124, 54 L. Ed. 965.

The language used by the Supreme Court of the United States is applicable here because the Supreme Court of Mississippi held that the business of the appellant in coming into Mississippi and soliciting laundry to be taken out of the state for servicing was peddling.

The Court used the followng language:

> "In the Emert case, therefore, there was no movement of goods in interstate commerce because of orders taken for their sale, but the specific articles carried about by the peddler and none other were sold and delivered by him. In the majority opinion of the Supreme Court of Arkansas the definition of hawkers and peddlers, as understood at common law, was recognized—as one who goes from house to house or place to place, carrying his merchandise with him, which he concurrently sells and delivers (2 Bouvier's Law Dict. 642) but it was said that the Legislature of Arkansas might define the word 'peddler' so as to include such as traveled from place to place and took orders for goods from other states, and that such persons, because of the statute declaring them so, were peddlers, and liable to be taxed under the lawful exercise of the police power of the state. We must look, however, to the substance of things, not the names by which they are labeled, particularly in dealing with rights created and conserved by the Federal Constitution in the decisions of this court. At common law and under the statutes which have been sustained concerning peddlers,

they are such as travel from place to place, selling the goods carried about with them; not such as to take orders for the delivery of goods to be shipped in the course of commerce. Here, as the facts show, the sample ranges carried about from place to place were not sold. Orders are taken and transmitted to the manufacturer in another state for ranges to be delivered in fulfillment of such orders, which are in fact shipped in interstate commerce and delivered to the persons who ordered them. Business of this character, as well settled by the decisions of this Court, constitutes interstate commerce, and the privilege of doing it cannot be taxed by the state". * * *

In the case of *Davis* v. *Virginia*, 236 U. S. 697, 59 L. ed. 795, the appellant solicited orders on blanks furnished by his employer for the taking of portraits, sending them out of the state, and redelivering the same in an appropriate frame. The contract therefor was signed in the state, sale made in the state, but the service contracted for was performed entirely out of the State. The Supreme Court of the United States held that the contract was interstate commerce and not subject to taxation, using the following language:

"The court below thought that the purchase of the frames was to be regarded as a separate transaction occurring wholly in Virginia. Whether or not this was its technical aspect as an executed contract, it often has been pointed out that commerce among the states is a practical, not a technical, conception. The preliminary contract bound the company to furnish a chance to take a frame with the portrait. Obviously it was contemplated that the frame would be sent from New York as well as the pictures, as in practice they were, and although the bargain was not complete until the company's offer was accepted in Virginia the furnishing of the opportunity was a part of the interstate transaction. From the point of view of commerce the

business was one affair. *Dozier* v. *Alabama*, 218 U. S. 124, 54 L. ed. 965: 28 LRA (N.S.) 264, 30 St. Ct. Rep. 649: Crenshaw v. Arkansas, 227 U. S. 387, 57 L. ed. 565, 33 S. ct. Rep. 294: Browning v. Waycross, 233 U. S. 16, 21, 58, L. ed. 828, 34 Sup. Ct. Rep. 578".

Judgment reversed".

In the case of *Caldwell* v. *State of North Carolina*, 187 U. S. 622, 47 L. ed. 336, the Supreme Court of the United States held to the same effect.

"An ordinance under which a license fee may be required for an agent of a nonresident portrait company, who requires from such company pictures and frames manufactured by it to fill orders previously obtained, and after breaking bulk and placing each picture in the frame designed for it, delivers them to the respective purchasers, is invalid as an attempt to interfere with and regulate interstate commerce".

In the case of *Dozier* v. *State of Alabama*, 218 U. S. 124, 54 L. ed. 965, a solicitor for a nonresident crayon company solicited the taking of photographs to be sent to another state for reframing and returned for a cash consideration. The solicitor was convicted under the state law and on appeal to the Supreme Court of the United States the judgment was reversed the court holding that the transaction was interstate commerce, using the following language:

"We are of the opinion that the sale of the frames cannot be so separated from the rest of the dealing between the Chicago Company and the Alabama purchaser as to sustain the license tax upon it. Under the decisions, the statute, as applied to this case, is a regulation of commerce among the states, and void under the Constitution of the United States, Art. 1. Section 8: Robbins v. Taxing Dist. 120 U. S. 489, 30 L. ed. 794: 1 Inters Com. Rep 45. 7 S. Ct. Rep. 592: Caldwell v. North Carolina, 187 US 622, 47 L ed. 326, 23 S Ct. Rep. 229;

Rearick v. Pa. 203 US 507, 51 L ed. 295, 27 S Ct. Rep. 159".

In the case of *Crutcher* v. *Kentucky*, (1891) 141 U. S. 47, 35 L. ed, the court used the following language:

> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out license for carrying on interstate commerce no matter how specious the pretext may be for imposing it".

In the case of *Welton* v. *State of Mo.* (1875) 91 U. S. 275, 23 L. ed. 347, The Supreme Court held that a state was without authority to provide a license fee for the solicitation of merchandise to be shipped from without a state.

> "The power of the state to exact a license tax of any amount being admitted, no authority would remain in the United States or in this court to control its action however unreasonable or oppres-ive. Imposts operating as an absolute exclusion of the goods would be possible, and all the evils of discrimination State legislation, favorable to the interests of one state and injurious to the interests of other states and counties, which existed previous to the adoption of the Constitution, might follow, and the experience of the last fifteen years shows would follow, from the action of some of the States".

In the case of *Webber* v. *Virginia*, (1880) 103 U. S. 344, 26 L. ed. 565, there was involved a Virginia statute requiring agents for the sale of articles manufactured in other states to obtain a license and pay a tax in each county where he might sell, or offer to sell his goods. No such license was required of agents for domestic goods. The court in striking down the act used the following language:

> "Here there is a clear discrimination in favor of home manufacturers and against the manufacturers of other states".

The original case upon the subject is *Robbins v. Tax District of Shelby County (Tenn.)*, 120 U. S. 489, 30 L. ed. 694. There was a tax imposed upon persons solicitating the sale of merchandise to be shipped from out of the state into the state. Appellant solicited sales of merchandise in the City of Memphis for commodities to be shipped from out of the state, was arrested and convicted, his conviction was affirmed by the Supreme Court of Tennessee and was appealed to the Supreme Court of the United States, which reversed the judgment. The Court used the following language:

> "It would not be difficult, however, to show that the tax authorized by the State of Tennessee in the present case is discriminative against the merchants and manufacturers of other states. They can only sell their goods in Memphis by the employment of drummers and by means of samples; whilst the merchants and manufacturers of Memphis, having regular licensed houses of business there, have no occasion for such agents, and if they had, they are not subject to any tax therefor. They are taxed for their licensed houses, it is true; but so, it is presumable, are the merchants and manufacturers of other states in the places where they reside; and the tax on drummers operates greatly to their disadvantage in comparison with the merchants and manufacturers of Memphis * * *"
>
> "To say that the tax, if invalid as against drummers from other States, operates as a discrimination against the drummers of Tennessee, against whom it is conceded to be valid, is no argument; because the state is not bound to tax its own drummers; and if it does so whilst having no power to tax those of other states, it acts of its own free will, and is itself the author of such discrimination. As before said, the state may tax its own internal commerce; BUT THAT DOES NOT GIVE IT ANY RIGHT TO TAX INTERSTATE COMMERCE".
>
> "The judgment of the Supreme Court of Tennessee

is reversed and the plaintiff in error must be discharged".

In the case of *William G. Asher* v. *State of Texas*, 128 U. S. 129, 32 L. ed. 368, an effort was made to have the Supreme Court of the United States overrule the case of *Robbins* v. *Shelby County*, last referred to, under the same state of facts.

The Supreme Court of the United States used the following language:

> "But it is strenously contended by that court that the decision of this ourt in Robbins v. Shelby Taxing District is contrary to sound principles of constitutionally construction and in conflict with well adjudicated cases formerly decided by this court and not overruled. Even if it were true that the decision referred to was not in harmony with some of the previous decisions, we had supposed that a later decision in conflict with prior ones had the effect to overrule them, whether mentioned and commented on or not. And as to the constitutional principles involved, our views were quite fully and carefully, if not clearly and satisfactorily expressed in the Robbins case. We do not propose to enter upon a renewed discussion of the subject at this time".

A very illustrative case is that of *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 54 L. ed. 678. In that case it appeared that the International Textbook Company from Scranton, Pa., conducted a correspondence school from which it taught selected courses in literature, arithmetic, science, and other questions. It solicited the sale of its system by correspondence by solicitation through agents. It sent an agent into the State of Kansas who secured a contract from a man by the name of Pigg to take the correspondence course of the appellant. The appellee, however, refused to pay for the services. Suit was brought in

the state court Kansas against the appellee for breach of contract. Appellee pleaded that the appellant was a foreign corporation; that it had not filed a copy of its charter with the Secretary of State of the State of Kansas, and therefore, was prohibited from maintaining any suit in the state court. Recovery was denied in the state court of Kansas and the Supreme Court of the United States held that the appellant was engaged in interstate commerce although it sent soliciting agents into the state who had procured the contract sued for. That is to say, in sending a representative into the state to solicit the sale of its services and procuring a contract, the appellant was not engaged in a local activity but was engaged in interstate commerce.

In reversing the judgment, the Supreme Court used the following language:

> "To carry on interstate commerce is not a franchise or privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities as a matter of convenience in carrying on their business cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject. Again, in the same case: 'would anyone pretend that a state legislature could prohibit a foreign corporation, an English or French transportation company—for instance—from coming into its borders and landing goods and passengers at its wharves, and soliciting goods and passengers for a return voyage, without first obtaining a license from some state officer, and filing a sworn statement as to the amount of its capital stock paid in? and why not? Evidently because the matter is not within the province of state legislation".

Mississippi is profiting very greatly by reason of the advantages of trade afforded under the interstate com-

merce clause of the Constitution of the United States. The most extensive seafood industry in the world is maintained on the Mississippi coast solely and exclusively by virtue of the protection of the interstate commerce clause of the Constitution of the United States under the interpretation of the Supreme Court of the United States. *Foster Fountain Packing Co.* v. *Haydel,* 278 U. S. 1, 73 L. ed. 149, 49 S. Ct. 1. Farmers in Southern Mississippi furnish the City of New Orleans, Louisiana, as well as the city of Memphis, Tenn. with milk. During the present year an effort was made by the farmers in the State of Louisiana to prohibit the shipment of milk from the state of Mississippi into Louisiana. The officials of the State of Mississippi properly availed themselves of the rights of farmers in Mississippi under the commerce clause of the Constitution of the United States. They invoked successfully the case of *Hood* v. *DuMond,* 336 U. S. 525, 93 L. ed. 865, and a more recent case of *Dean Milk Co.* v. *Madison,* decided Dec. 7, 1950, reported Vol. 95, Lawyers Advance Sheets, Supreme Court of the United States at page 228.

The furnaces in the steel mills of Birmingham, Ala. are heated by gas piped in interstate commerce from gas fields in Mississippi to the city of Birmingham, a right protected under the commerce clause of the Constitution of the United States as construed by the Supreme Court of the United States, *Pa.* v. *West Va.,* 262 U. S. 553 67 L. ed. 1117, 32ALR 300.

The Supreme Court of Mississippi predicated its opinion in the present case on the opinion of this court in *Craig* v. *Mills,* 33 So. (2d) 801, 203 Miss. 693. In that case the appellee was engaged in two occupations in the State of Mississippi. Its employees would take photographs in the state of persons and send them out of the state for enlargement. The Court held that the taking of the photographs

in the state to be sent beyond the limits of the state for enlargement was a local activity basing its conclusions on the following cases:

Brown Foreman Co. v. *Kentucky*, 217 U. S. 563, 54 L. ed. 883. In that case the court decided that an act of the Legislature of Kentucky imposing a tax upon the business of compounding, rectifying and blending distilled spirits did not violate the 14th Amendment to the Constitution of the United States.

In the case of *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165 76 L. ed. 1038 the court held that the generation of electricity was a local activity subject to the tax although the electricity generated afterwards passed in interstate commerce.

In the case of *Cloverdale* v. *Ark-La Pipeline Co.*, 303 U. S. 604, 82 L. ed. 1043, the court held that a statute imposing a privilege tax upon the production of mechanical power was a valid tax, was a local activity and not in interference with interstate commerce.

In the case of *Joseph D. McGoldrick* v. *Berwind-White Coal Mine Company*, 309 U. S. 833, 84 L. ed. 565, the appellant being engaged in business in New York City entered into a contract for the purchase of coal to be shipped in interstate commerce to the appellee in New York City. The delivery of the coal and vesting of title took place in New York City where the contract for the purchase thereof was made. This court held that a sales tax thereupon was not a burden upon interstate commerce. Domestic commerce was subject to the same tax and the tax was laid upon every purchaser, within the state, of goods for consummation regardless of whether they had been transported in interstate commerce. The opinion, however, contained the

following observation which is applicable to the present case:

> "Forms of state taxation whose tendency is to prohibit the commerce or place it at a disadvantage as compared or in competition with intrastate commerce and any state tax which discriminates against the commerce, are familiar examples of the exercise of state taxing power in an unconstitutional manner, because of its obvious regulatory effect upon commerce between the states."

The court in its opinion, in this case, however, completely overlooked the fact that it held that persons merely soliciting photographs to be taken out of the state for enlargement were not subject to the tax. The court used the following language:

> "The business of taking and developing photographs is a specialized calling, trade or profession, and we are of the opinion that under the facts alleged in the bill of complaint the employees of the appellees in this state, other than the photographer, are neither taking nor developing photographs, and that, therefore, the appellees are liable only for the payment of the privilege tax on behalf of their photographer who is engaged in the local activity of taking pictures in this state" (P. 707) 203 Miss.

The court expressly held that the tax collector should be enjoined from attempting to collect the tax if the persons merely solicited photographs to be sent out of the state for enlargement as to which the court used the following language:

> "It should be noted that the reasoning of the case of Nippert v. City of Richmond, 327 U. S. 416, 66 S. Ct. 586, 90 L. Ed. 760, 162 ALR 844, furnishes a strong argument in favor of the contention of the appellees on the question of whether or not the tax in question violates the Commerce Clause in the Federal Constitution

except for the fact that in that case the tax is upon the act of soliciting in one state in behalf of the seller in another state, instead of being a tax upon a local activity in the taxing state which constitutes the original, basic and essential step in the manufacture of the article to be sold.

"From the foregoing facts it would follow that the statute as hereinbefore construed is neither unreasonable and discriminatory nor in violation of the commerce clause or any other provision of the Federal Constitution" (p. 714) 203 Miss.

The court held that the taking of photographs in the state to be sent out of the state for enlargement or development was a local activity subject to tax but the mere solicitation of photographs to be sent out of the state for enlargement was not a local activity and not subject to tax.

The Court completely overlooked the vital distinction in this case that the mere soliciting of laundry to be taken out of the state for service was not a local activity but interstate commerce and upon such distinction this case turns.

We call attention to the fact that in the present instance, interstate commerce is bearing its share of the burden, paying $8.00 per truck in each county, the same liability imposed upon resident citizens.

It has done this regardless of liability therefor and we call Your Honors' attention to the opinion of the Attorney General of Mississippi in which opinion it is stated that if a nonresident laundry paid the local tax of $8.00 being the same paid by a resident, no greater burden could be imposed on it. See appendix 4.

The State Tax Commission followed the opinion of the Attorney General up until recently.

The state courts have uniformly held that the solicitation of laundry to be taken from one state into another is interstate commerce.

The Supreme Court of Kansas so held in the case of *Kansas City* v. *Seaman*, 160 Pac. 1139.

The same was held in an appellate court in the State of New York, *People* v. *Vechion*, 276 N. Y. S. 705.

The Supreme Court of Kansas reached a same conclusion in *Comm.* v. *Pearl Laundry Co.*, 105 Kentucky 259, 49 S. W. 36.

From the foregoing it necessarily appears that the imposition of the tax was violative of the interstate commerce clause of the Constitution of the United States not only because interstate activities and commerce is not subject to taxation by the state, but because interstate commerce was discriminated against in that a citizen of the state might perform the same service for a laundry situated within the state upon payment of a tax of $8.00 that is to say, a laundry situated in the state might send trucks 200 miles, upon the payment of $8.00 to each county, whereas the appellee was prohibited from engaging in an interstate transaction in the mere outskirts of Memphis except upon the payment of $50.00 in each county.

This question needs no further argument.

The Question of Violating the Equality Clause and the Due Process Clause of the Constitution of the United States.

It is very true that taxing statutes in dealing with the equality clause are subject to classification, but that does not mean that one tax may be imposed upon a resident, and a different tax imposed on a nonresident, for engaging in the same activity, and the authorities cited by appellant's counsel do not support this rule.

It is conceded in this case that there is demanded of the appellant a tax of $50.00 upon each truck, whereas the representative of a laundry from the most remote county in

Mississippi could exercise the same privilege by paying $8.00, in each county.

Counsel cites the case of *Caskey Baking Co. v. Virginia*, 313 U. S. 117, 85 L. Ed. 1222.

In that case, a nonresident of the State of Virginia, by means of a truck transported bread into the State of Virginia and made sales of bread to persons desiring to buy the same from the truck.

The court justified a different privilege tax upon that occupation from a wholesale merchant doing business in the state.

The court, speaking through Mr. Justice Roberts, in sustaining the Act, used the following language:

> "While the transportation of bread across the State line is interstate commerce, that is not the activity which is licensed or taxed. The purely local business of peddling is what the Act hits, and this irrespective of the source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts. The appellant, however, urges that the Act discriminates against interstate commerce by exempting from its operation the privilege of sales by manufacturers paying tax on their capital employed in manufacture in Virginia. It is said that if its bakery were situate in Virginia the appellant would have the benefit of this exemption and since it is not, the marketing of appellant's goods shipped into the State is the target of a hostile discrimination, but the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the State, or buy or procure them from extra-state sources, are alike subject to the Act. The contention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions."

But no question of commerce was involved in that case. The question was one of classification as applied to intrastate commerce. Exactly the opposite is presented here.

The following authorities are directly in point.

A statute providing a higher tax for a nonresident than a resident in carrying on the same business violates the 14th Amendment to the Constitution of the United States. *Frost* v. *Corporation Commission*, 278 U. S. 515, 73 L. Ed. 483; *Mayflower Farmers* v. *Teneyck*, 297 U. S. 266, 80 L. Ed. 265; *F. S. Royster Guano* v. *Virginia*, 253 U. S. 412, 64 L. Ed. 989; *Hartford Boiler Insurance Company* v. *Howerton*, 301 U. S. 459, 81 L. Ed. 1223; *Maxwell* v. *Bugbee*, 250 U. S. 525, 63 L. Ed. 1124; *Hayes* v. *Missouri*, 120 U. S. 68, 30 L. Ed. 578.

In the case of *Bethlehem Motors Corporation* v. *George W. Flynt, et al.*, 256 U. S. 421, 65 L. Ed. 1029, the court held that a statute of the State of North Carolina violated both the 14th Amendment to the Constitution of the United States and of the Interstate Commission Laws where statute required a tax of $3000.00 for the sale of automobiles unless the manufacturer had three-fourths of its capital invested in the state, in which event the tax was only $500.00.

See *I. M. Darnell* v. *Memphis*, 52 L. Ed. 413. In the case of *Ward* v. *Maryland*, 12 Wall. 418, 20 L. Ed. 449, the court held that a state statute prohibits the sale within a certain district of the state articles other than agricultural products and articles manufactured in the state by persons not residents of the state without first obtaining a license and paying therefor was violating the Constitution. See also *Sully* v. *American National Bank*, 178 U. S. 289, 44 L. Ed. 1072. See also *Chalker* v. *Birmingham Railroad Company*, 249 U. S. 522, 63 L. Ed. 740; *Power Manufacturing Company* v. *Saunders*, 274 U. S. 490, 81 L. Ed. 1165; *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494, 71 L. Ed. 372,

49 A. L. R. 713; *Baltic Mining Co.* v. *Mass.*, 58 L. Ed. 127.

We call the Court's attention to the official opinion of the Attorney General of the State of Mississippi of August 1, 1940, advising the appellee in this case that no discrimination could be had between a resident or nonresident laundry. The Attorney General seemed to be of the opinion that a nonresident laundry should bear its proportionate part of the burden and advised the State Tax Commission that if the nonresident laundry paid the $8.00 per truck no further tax should be required.

A copy of this opinion is hereto attached as Appendix 4.

The appellant has acquiesced in the opinion of the Attorney General of Mississippi and paid $8.00 on each truck and will continue to do so. The appellee is unwilling to abide by the opinion of the Attorney General of Mississippi.

We first respectfully submit that Paragraphs (t) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944 violate the interstate commerce clause of the Constitution of the United States.

Second, we further submit that the mere solicitation of laundry to be taken out of the state for service with no part thereof performed in Mississippi is not a local activity.

Third, we submit for the reasons hereinbefore set out that the provisions of the statute aforesaid violate Section (1) of the 14th Amendment to the Constitution of the United States.

It is respectfully submitted that the questions presented by your appellant are substantial and of public importance; that the judgment rendered by the Supreme Court of the State of Mississippi appealed from should be reversed.

C. E. Clifton,
Memphis, Tenn.
Wm. H. Watkins,
Counsel for Memphis Steam Laundry Cleaner, Inc., Plaintiff-appellant.

APPENDIX 1

IN THE SUPREME COURT OF MISSISSIPPI

No. 37,960

(OPINION RENDERED JUNE 11, 1951)

DIVISION B

A. H. STONE, Chairman, State Tax Commission

vs.

MEMPHIS STEAM LAUNDRY CLEANER, INC., ARRINGTON, C.

This suit was filed by the appellee, Memphis Steam Laundry Cleaner, Inc., a foreign corporation located in Memphis, Tennessee, to recover $500.00 for privilege taxes previouly paid by it to A. H. Stone, Chairman State Tax Commission of the State of Mississippi. The suit was tried by the lower court on declaration and answer and judgment rendered for appellee, from which judgment the appellant appeals.

It is admitted that the appellee was sending ten trucks into eight counties in Mississippi soliciting laundry, which it carried to Memphis, serviced and returned, and upon which a privilege tax of $50.00 was paid on the driver of each truck. This appeal involves the construction of Section 45, subsections (t) and (y), Chapter 138, Laws of Mississippi of 1944, known as the state-wide privilege tax law. Section 3 of this act provides:

> "Every person desiring to engage in any business, or exercise any privilege hereafter specified shall first, before commencing same, apply for, pay for, and procure from the state tax commissioner or commissioner of insurance, a privilege license authorizing him to engage in the business or exercise the privilege specified therein, and the amount of tax shown in the following sections is hereby imposed for the privilege of engaging or continuing in the business set out therein."

Section 45 of said act provides:

"Upon each person doing business as a transient vendor, or dealer, as defined in this section, and upon which a privilege tax is not specifically imposed by another section of this act, a tax for each county according to the following schedules:

. . . (t) Upon each person soliciting business for a laundry not licensed in this state as such, in each county . . . $50.00

. . . (y) Provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business."

The appellee contends that it is not liable for the tax on the following grounds:

"Point I. Neither the appellee nor the drivers of its trucks were transient vendors or dealers under Paragraphs (t) and (y), Section 45, Mississippi Laws of 1944, as defined in said act. If the paragraphs of said statute or either of them shall be construed and enforced in this case as to render the appellee liable for the tax sought to be recovered in this case, the said paragraphs and each of them violate the interstate commerce clause of the Constitution of the United States because the appellee and its agents and servants were engaged solely In Interstate Commerce and Said Paragraphs and each of them discriminate against interstate commerce in that under Section 110, Chapter 137, Mississippi Laws of 1944, a tax of only $8.00 would be imposed upon a truck operating exclusively in the State of Mississippi.

"Point II. Paragraphs (t) and (y). Section 45, Chapter 138, Mississippi Laws of 1944, if construed as to impose liability on the appellee in this case, violate the 14th Amendment to the Constitution of the United States in that the appellee would thereby be denied the equal protection of the law, as well as due process.

and for the same reason said paragraphs and each of them, would violate the 14th Section of the Bill of Rights of the State of Mississippi."

We are of the opinion that there is no merit in the contention that the appellee is not liable for the tax for the reason at its drivers are not transient vendors or dealers, Section 110 of Chapter 137, Laws of Mississippi 1944, local rivilege Tax Law, for the benefit of counties and municilities, provides:

"Laundries, Sec. 110, Upon each person operating a laundry other than a hand laundry as follows:

In municipalities of class 1	$120.00
In municipalities of class 2	80.00
In municipalities of classes 3 and 4	60.00
In municipalities of classes 5, 6, 7 and elsewhere in the county	32.00
Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located	8.00"

The appellee contends that by reason of the above section, hich permits resident and licensed laundries to operate truck in a municipality other than where the laundry is cated by paying a tax of $8.00, and requiring it to pay a x of $50.00, discriminates against interstate commerce. he legislature, in making this classification which is reanable, no doubt took into consideration the fact that local undries were required to pay ad valorem, privilege, and any other taxes. The tax involved here is not a tax on terstate commerce, but a tax on a person soliciting busiss for a laundry not licensed in this state, a local activity hich applies to residents and non-residents alike.

In the case of Craig v. Mills, 203 Miss. 692, 33 So. 2d 801, hich case involved privilege taxes and where similar estions were involved, the Court said:

"From its very nature the business of taking photographs is essentially localized in character. The customer, the photograph and the camera used by him

must of necessity be in the state where the photograph is taken. Moreover the tax is not laid upon the transmission of the exposed negative from Mississippi to Tuscaloosa, Alabama, in the instant case; nor upon the return of the finished product to the customer in interstate commerce. It is levied upon the local activity of taking photographs in this state which are to be thereafter developed outside of the state. The interstate commerce does not begin until after the work of the photographer in taking the negative is completed. The taking of such negative is not Commerce, but is merely a step in the preparation therefor and which is taken by one engaged in a particular calling or profession in this state. . . . . As supporting the view that such a tax may be imposed upon the business of the appellees, in so far as the local activity of appellees' photographer is concerned, the principles announced in the following cases are likewise applicable:

Brown-Forman Co. v. Kentucky, 217 U.S. 563, 573, 30 S. Ct. 578, 54 L. Ed. 883; Utah Power & Light Co. v. Pfost, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038, 1045-1947; Smith v. Jackson, 103 Tenn. 673, 54 S.W. 981, 47 L.R.A. 416; Willis, Constitutional Laws, p. 312; and Stone v. General Electric Contracts Corp., 193 Miss. 317, 7 So. 2d 811, Coverdale v. Arkansas-Louisiana Pipe Line Co. 303 U.S. 604, 58 S. Ct. 736 L. Ed. 1043; McGoldtrick v. Berwind-White Coal Mining Co., 309 U.S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A.L.R. 876; Oliver Iron Mining Co. v. Lord, 262 U.S. 172, 43 S. Ct. 526, 67 L. Ed. 929."

This tax does not violate the 14th Amendment of the Constitution of the United States or the 14th Amendment of the Constitution of the State of Mississippi. In Craig v. Mills, supra, the Court held:

"The courts cannot require the legislature to specify its reasons for a classification of persons, firms, or corporations for tax purposes, but they should always presume that the legislature acted on legitimate grounds of distinction, if such grounds exist. And

one who assails the classification of a statute "must carry the burden of showing that it is not based on any reasonable basis. It is presumed that the legislature in making discriminations in classifications in statutes bases them on adequate grounds."

In Notgrass Drug Company et al v. State, ex rel Rice, Attorney General, 175 Miss. 358, 165 So. 884, the Court said:

"But the applicant says that the classification and exemptions here provided violate the due process clause of the State Constitution (Section 14), and the equality and due process clause of the State Constitution (Section 14), and the equality and due process clauses of the Fourteenth Amendment to the Federal Constitution.

" 'The principles which govern the decision of this clause are well settled. The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings or occupation. . . The fact that a statute discriminates in favor of a certain class does not make it arbitrary, if the discrimination is founded upon a reasonable distinction, ... or if any state of facts reasonably can be conceived to sustain it . . . It is not the function of this Court in cases like the present to consider the propriety or justness of the tax to seek for the motives, or to criticize the public policy which prompted the adoption of the legislation. Our duty is to sustain the classification adopted by the Legislature if there are substantial differences between the occupations separately classified. Such differences need not be great.' State Board of Tax Commissioners of Indiana v. Lafayette A. Jackson, 283 U.S. 527, 51 S. Ct. 540, 543, 75 L. Ed. 1248, 73 A.L.R. 1464.

"In imposing the tax here under consideration the Legislature has the right to classify persons and com-

modities subject thereto. 'In its discretion it may tax all, or it may tax one or some, taking care to accord to all in the same class equality of rights.' . . ."

We think the questions involved here are answered in the case of Caskey Baking Co. v. Virginia, 313 U.S. 117, 85 L. Ed. 1223, where the Court said in part:

"In the State courts, and here, the appellant challenged the statute as contravening the commerce clause and the equal protection clause of the federal Constitution. Its position is that it is doing either an interstate business which the State may not burden by imposing a license tax, or in intrastate business as to which the exaction works a forbidden discrimination. We hold both contentions untenable.

"1. While the transportation of bread across the state line is interstate commerce, that is not the activity which is licensed or taxed. The purely local business at peddling is what the Act hits, and irrespective of the source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts. The appellant, however, urges that the Act discriminates against interstate commerce by exempting from its operation the privilege of sales by manufacturers paying tax on their capital employed in manufacture in Virginia. It is said that if its baker were situated in Virginia and the appellant would have the benefit of this exemption and, since it is not, the marketing of appellant's goods shipped into the State is the target of a hostile discrimination. But the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the state, or buy or procure them from extrastate sources, are alike subject to the Act. The contention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions. . . . As the court below points out, were it not for Sec. 192b, such peddlers would be the only vendors in Virginia to escape some form of taxation.

"Peddlers at wholesale are not entitled to be licensed

and taxed on the same basis as other vendors, as respects either form or amount. As we have repeatedly held, the equal protection clause of the Fourteenth Amendment does not prevent a State from classifying business for taxation or impose any iron rule of equality. Some occupations may be taxed though others are not. Some may be taxed one rate, others at a different rate. Classification is not discrimination. It is enough that those in the same class are treated with equality. This is true here."

Reversed and Judgment Entered here for Appellant.

Per Curiam. The above opinion is adopted as the opinion of the Court, and for the reasons therein indicated, the judgment of the court below is reversed and judgment entered here for appellant.

APPENDIX 2

Section 45, Chapter 138, Mississippi Laws of 1944.

Upon each person doing business as a transient vendor, or dealer, as defined in this section, and upon which a privilege tax is not specifically imposed by another section of this act, a tax for each county according to the following schedules:

(a) Upon each transient vendor, or dealer of candies, peanuts, salted or roasted nuts, ice cream or ice cream products, or any other confection	$10.00
(b) Upon each transient vendor, or dealer of spectacles	$25.00
(c) Upon each transient vendor, or dealer of fish, oysters, or other sea foods (except a fisherman selling his own catch)	$10.00
(d) Upon each transient vendor, or dealer of batteries of motor vehicles	$15.00
(e) Upon each transient vendor or dealer of radios, phonographs, phonograph records, pianos or other musical instruments	$20.00

(f) Upon each transient vendor, or dealer of patent, proprietary, secret or trademarked medicines, or nostrums, or ordinary household remedies, cosmetics, flavoring extracts, condiments, sauces and spices, when sold by methods other than described in (x) $25.00

(g) Upon each transient vendor, or dealer of gasoline, kerosene, lubricating oil, or other petroleum products $25.00

Provided that the provisions of this section shall not apply to transient vendors, or their agents, or representatives, in the sale or delivery of gasoline, oil, or similar petroleum products when drawn, conveyed and distributed from a stock maintained at a warehouse, oil depot, distribution station, or established place of business in this state, upon which has been paid all privilege taxes required.

(h) Upon each transient vendor or dealer of coffee, tea, flavoring extracts, condiments, sauces or spices, when such transient vendor sells at wholesale to retail dealers only, for each county $25.00

(i) Upon each transient vendor, or dealer of coffee, tea, flavoring extracts, condiments, sauces or spices, when such transient vendor sells at retail to consumers, for each county $50.00

Provided, further, that a dealer or transient vendor who sells to both consumers and retailers, shall be liable for the $50.00 tax.

(j) Upon each transient vendor, or dealer of dry goods, including ready-to-wear clothes, bed spreads, table cloths, etc., small rugs, or other small articles of furniture $25.00

(k) Upon each transient vendor, or dealer of household or kitchen utensils, brooms, pots, pans, dishes, knives, forks, spoons, or small hardware such as rakes, hoes, or hand garden tools $50.00

(l) Upon each transient vendor, or dealer of motor vehicle accessories, motor vehicle parts or motor vehicle tires $10.00

(m) Upon each transient vendor, or dealer in anthracite or bituminous coal or coke $100.00

(n) Upon each transient vendor or dealer of bread, rolls, cakes, pies or other bakery products, except those acting for a bakery duly licensed in this state, in each county $50.00

(o) Upon each transient vendor, or dealer of cigarettes, cigars, or other tobaccos $50.00

(p) Upon each transient vendor, or dealer of raw furs $50.00

(q) Upon each transient vendor or dealer in jewelry $50.00

(r) Upon each transient vendor or dealer of soda water, coca-cola, pepsi-cola, chero-cola, ginger ale, grape and other fruit juices, or imitations thereof, carbonated or other beverages, or like preparations commonly known as soft drinks, acting for a person not licensed in this state, in each county $100.00

(s) Upon each transient vendor, or dealer engaged in the business of renting or leasing towels, pillow cases, sheets, bed spreads, or other similar articles, not licensed in this state, in each county $50.00

(t) Upon each person soliciting business for a laundry not licensed in this state as such, in each county $50.00

(u) Upon each transient vendor, or dealer of a general line of goods, wares and merchandise usually carried for sale in a general mercantile store, upon each truck operated whereon general merchandise is carried, in each county $85.00

Provided that where a general line of merchandise is carried, the several taxes levied herein on specific articles or classes of merchandise shall not apply.

(v) Upon each transient vendor, or dealer of fruits, vegetables or other produce, in each county $50.00

Provided, however, that when perishable fruits and vegetables are sold from a plant, warehouse, or built-in refrigeration plant, situated in this state, assessed at not less than $3,000.00 upon which a proper tax has been, or is being paid, the tax imposed upon a transient vendor, dealer or salesman of such perishable fruits and vegetables shall then be $10.00 for each county.

(w) Upon each transient vendor, or dealer of any goods, wares or merchandise not elsewhere specifically taxed in each county $20.00

(x) Upon each transient vendor, or dealer of patent, proprietary, secret, or trademarked medicines, or nostrums by whatever name called, and whether or not such medicines are sold or disposed of in or through the store of a druggist or merchant, when sold, advertised, offered for sale, or traded by harangue, or through or by means of minstrels, exhibitions, attractions, shows, or amusements in any form, in each county $250.00

Provided that each natural person doing business as a transient vendor, or dealer traveling on

foot shall pay one-fifth (1/5) of the amount set out in the above schedule.

(y) provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business.

APPENDIX 3

Section 110, Chapter 137 Mississippi Laws of 1944.
Appendix 2 to Statement of jurisdiction.
Upon each person operating a laundry other than a hand laundry, as follows:

In municipalities of class 1	$120.00
In municipalities of class 2	$ 80.00
In municipalities of classes 3 and 4	$ 60.00
In municipalities of classes 5, 6, 7 and elsewhere in the county	$ 32.00
Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located	$ 8.00

APPENDIX 4

Mr. E. R. Prenshaw, Chief
License and Tobacco Tax Division
State Tax Commission
Jackson, Mississippi

Dear sir:

Under date of August 31st, I have your inquiry as to the amount of privilege tax levied by the privilege Tax Act of 1940 on agents of a Laundry located outside of the State of Mississippi when the agents are soliciting laundry in the State of Mississippi.

Opinion

Section 123, Privilege Tax of 1940, levies a privilege tax "Upon each person operating a laundry other than a hand laundry, as follows":

The tax then levied graduated in amount according to the population of the municipality in which the laundry was located. Said Section then levies a tax "upon each agent for such laundry in a municipality other than where the laundry is located, $8.00."

Section 221 of said act levies a privilege tax upon each person doing business as a transient vendor or dealer. The term "transient vendor" is defined.

Paragraph (t) of said section levies a privilege tax as follows: "Upon each person soliciting business for a laundry not licensed in said state as such, in each county, $50.00".

The definition of a transient vendor or dealer as set out in said section is not broad enough to cover a person soliciting for a laundry and it is rather uncertain as to whether this tax would be valid at all.

The law is well settled that a state cannot by levying a tax, discriminate between citizens, products or businesses carried on in other states. It is true that the tax levied by Paragraph (t) is not specifically limited to an agent of a laundry located outside of the state. However, all laundries located within the state are required to pay a tax under the provisions of Section 123 and it could not apply to a laundry located in the state. Unless an out of state laundry is permitted to pay the tax levied by Section 123, and pay the tax levied on its agents by said section, it is clear that the provisions of said Paragraph (t) would discriminate against the out of state laundries, and for this reason said paragraph (t) would be invalid and unconstitutional.

It further appears that the tax levied by said Section 221 is only levied on transient vendors or dealers who are not specifically taxed by another section. Said Section 123 specifically taxes the agents of laundries, whether operating within this state or without this state.

I therefore advise that where a laundry is located outside of the state and sends its agents into the state to solicit laundry, the laundry could pay the tax on laundries as is levied by Section 123 and on its agents under the provisions of said section, in which event it would not be liable for the taxes levied by Section 221 (t). If the out of state laundry does not pay the tax levied on laundries under the provisions of Section 123, then it would be liable for the tax levied on its agents by said Section 221 (t).

Biennial Report of the Attorney General 1939-41, page 92.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION

AMENDED STATEMENT OF JURISDICTION

At the time the original statement of jurisdiction was filed the case had not been officially reported and will now be found, *Stone, Chairman State Tax Commission* v. *Memphis Steam Laundry Cleaner, Inc.*, 53 So. (2d) 89.

Since filing the original statement of jurisdiction, our attention has been directed to the case of *Bread* v. *City of Alexandria*, decided June 4, 1951, reported L. ed, Advance Opinions 95, p. 838. Notwithstanding the differences of opinion expressed by the members of the Court in that case, the dissenting opinion of Mr. Chief Justice Vinson and Mr. Associate Justice Douglas is entirely applicable in this case. The following language was used:

> "At least since the decision in Robbins v. Shelby County Taxing Dist. 120 U. S. 489, 497, 30 L. ed. 694, 697, 7 S. Ct. 592, (1887) this Court has regarded the

process of soliciting orders for goods to be shipped across state lines as being interstate commerce as much as the transportation itself. Under the line of cases following this principle, reexamined and reaffirmed in Nippert v. Richmond, 327 U. S. 416, 90 L. ed. 760, 66 S. Ct. 586 162 A. L. R. 844 (1946), the process of solicitation for interstate commerce cannot be subjected to taxes, licenses, or bonding requirements that in their practical operation discriminate against or unduly burden interstate commerce. The Court does not today purport to overrule this line of decisions. And it acknowledges, as it must, that the Court has sharply distinguished the process of solicitation of interstate business from the essentially local retailing operations of hawking and peddling. See Wagner v. Covington, 251 U. S. 95, 103, 14, 64 L. ed. 157, 167, 168, 40 S. Ct. 93 (1919) and cases cited therein. Nor does the opinion dispute that this ordinance has a severe economic impact upon the substantial interstate business of appellant's employer, as well as the entire magazine industry which derives 50% to 60% of its annual subscription circulation from the very type of solicitation prohibited by this ordinance. I disagree with the Court in its holding that an ordinance imposing a "blanket prohibition" can be sustained under the Commerce Clause as mere regulation.

Congress is given the power 'to regulate Commerce . . . among the several states' U. S. Const. Art. 1 Sec. 8 Cl. 3. The doctrine of Cooley v. Port Wardens (U. S.) 12 How 299, 13 L. ed. 996 (1851) permits a state to exercise its police powers in a manner impinging upon interstate commerce only where the subject of regulation is essentially local and then only when there is no discrimination against or undue burden on interstate commerce. This is an approach grounded in the practical, an approach which imposes upon this Court the 'duty to determine whether the statute (or ordinance) under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce'. Best & Co. v. Maxwell, 311 U. S.

454, 455, 456, 85 L. ed. 275 277, 61 S. Ct. 334 (1940). That this ordinance, on its face, professes to protect the home does not relieve us of our duty to weigh the practical effect of the ordinance upon interstate commerce. Lack of discrimination on its face has not heretofore been regarded as sufficient to sustain an ordinance without inquiry into its practical effects upon interstate commerce. E. g., Dean Milk Co. v. Madison 340 U. S. 349, 354, ante, 228, 230, 71 S. Ct. 295 (1951) (prohibition against sale of milk pasteurized more than five miles from city): Real Silk Hosiery Mills v. Portland, 268 U. S. 325, 336, 69 L. ed. 982, 985, 45 S. Ct. 525 (1925) (Requirement that solicitors file bond) Minnesota v. Barber, 136 U. S. 313, 34 L. ed. 455, 10 S. Ct. 862 (1890) Statute requiring inspection of meat within state).

In passing upon other ordinances affecting solicitors, this Court has not hesitated in noting the economic fact that the " 'real competitors' of (solicitors) are, among others, the local retail merchants". Nippert v. Richmond, supra (327 U. S. 433, 90 L. ed. 770, 66 S. Ct. 586, 162 A. L. R. 844) citing Best & Co. v. Maxwell, 311 U. S. 454, 85 L. ed. 275, 61 S. Ct. 334, supra. See also Robbins v. Shelby County Taxing Dist. supra (120 U. S. at 498, 30 L. ed. 697, 7 S. Ct. 592). The court acknowledges 'effective competition' among solicitors and the local retail merchants, ante, p. 841, but is deliberate in its refusal to appraise the practical effect of this ordinance as a deterrent to interstate commerce, id. p. 847. I think it plain that a 'blanket prohibition' upon appellant's solicitation discriminates against and unduly burdens interstate commerce in favoring local retail merchants. 'Whether or not it was so intended, those are its necessary effects'. Nippert v. Richmond, supra (327 IS at 434, 90 L. Ed. 770, 66 S. Ct. 586, 162 A. L. R. 884). The fact that this ordinance exempts solicitation by the essentially local purveyors of farm products shows that local economic interests are relieved of the burdensome effects of the ordinance. No one doubts that protection of the

home is a proper subject of legislation, but that end can be served without prohibiting interstate commerce. Our prior decisions cannot be avoided by limiting their authority to the limited categories of tax and license. On the contrary, we must guard against state action which 'in any form or under any guise, directly burden(s) the prosecution of interstate business' Baldwin v. G. A. F. Seelig, Inc. 294, U. S. 511, 522, 79 L. Ed. 1032, 1037, 55 S. Ct. 497, (1935) citing International Textbook Co. v. Pigg, 217 U. S. 91, 112, 54 L. Ed. 678, 687, 30 S. Ct. 481, 27 LRA NS 493, 18 Ann. Cas. 1103 (1910). See also H. P. Hood & Sons v. Du Mond 336 U. S. 525, 93 L. Ed. 865, 69 S. Ct. 657 (1949)".

The statutes involved in this case are not regulatory measures; the statutes, however, are passed for the purpose of raising revenue. Neither is a tax levied in lieu of an ad valorem tax. The language used by the Court in *Spector Motor Service, Inc.* v. *O'Connor*, decided March 26, 1951, reported 94 L. ed. Advance Sheets, 435, is entirely applicable. The Court used the following language:

> "The objection to its validity does not rest on a claim that it places an unduly heavy burden on interstate commerce in return for protection given by the State. The tax is not levied as compensation for the use of highways or collected in lieu of an ad valorem property tax. Those bases of taxation have been disclaimed by the highest court of the taxing state. It is not a fee for an inspection or a tax on sales or use. It is a 'tax or excise' placed unequivocally upon the corporation's franchise for the privilege of carrying on exclusively interstate transportation in the State".

The Supreme Court of Mississippi did not hold that the tax was a lieu tax and that a non-resident laundry would not be subject to an ad valorem tax if it owned property situated within the State. The Court is drawing a classification based upon the theory that a domestic

corporation would own property in the state and would be, therefore, subject to ad valorem tax; that the appellant is a foreign corporation, as the record will disclose, and owned no property in the State of Mississippi, and therefore, would not be subject to ad valorem taxes in the State of Mississippi. The mere fact, however, that the appellant owned no property located in the State of Mississippi and therefore paid no ad valorem tax would not justify the imposition of a privilege tax for the transaction of interstate commerce.

Under Section 9744, 1942 Code, all property, whether real or personal in the State of Mississippi, upon the 1st day of January of each year is subject to ad valorem taxes. A copy thereof is made Appendix 1 to this amendment.

There is nothing in the statute involved exempting the appellant from liability for such ad valorem taxes as it owned no property within the state upon the first day of January of any year. We desire to lay emphasis upon the discrimination; a truck serving a domestic laundry would be subject only to an $8.00 per annum tax in each county, which the appellant has paid, while upon the other hand, the appellant soliciting for its laundry situated out of the state is required to pay $50.00 upon each truck.

We respectfully submit that the judgment of the Supreme Court of Mississippi should be reversed and that of the Circuit Court, First Judicial District, Hinds County, Mississippi, affirmed.

Respectfully submitted,

W. H. WATKINS,

Attorneys for appellant, Memphis Steam Laundry Cleaner, Inc.

I, J. H. Sumrall, general counsel for the State Tax Commission, appellee in the above entitled cause, acknowledge

receipt of copy of the above and foregoing amendment to statement of jurisdiction.

This 29th day of August 1951.

J. H. SUMRALL,
General Counsel
State Tax Commission.

Sec. 9744. Taxes, a lien, from what date.—Taxes, State, county, and municipal, assessed upon lands or personal property, shall bind the same, and be entitled to preference over all judgments, executions, incumbrances, or liens, whensoever created; and all taxes assessed shall be a lien upon and bind the property assessed, from the first day of January of the year in which the assessment shall be made; and no property shall be exempt from distress and sale for taxes. And it shall not be necessary to the validity of an assessment, or of a sale of land for taxes, that it shall be assessed to its true owner; but the taxes shall be a charge on the land or personal property taxed, and the sale shall be a proceeding against the thing sold, and shall vest title in the purchaser, without regard to who may own the land or other property when assessed or when sold, or whether wrongfully assessed, either to a person, or to the State, or any county, city, town, or village, or subdivision of either. Provided, however, that the lien for municipal taxes shall be secondary and subordinate to the lien for State and county taxes.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,
Appellant,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI,
Appellee

BRIEF OF APPELLANT

C. E. CLIFTON,
Memphis, Tennessee;
W. H. WATKINS, SR.,
P. H. EAGER, JR.,
THOMAS H. WATKINS,
Jackson, Mississippi.

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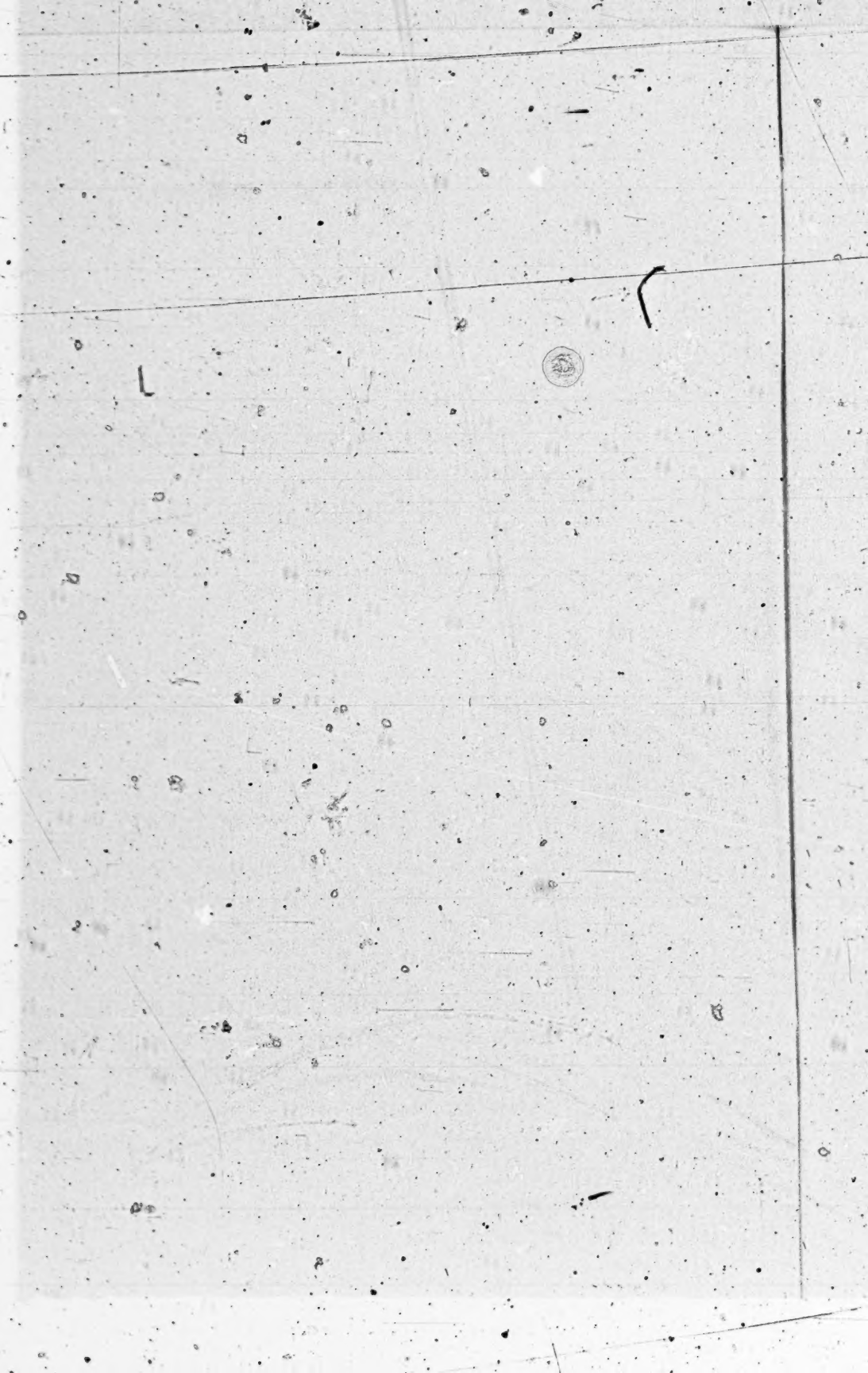

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,
Appellant,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI,
Appellee

BRIEF OF THE APPELLANT

Statement of Grounds of Jurisdiction

This is an appeal from a judgment of the Supreme Court of the state of Mississippi reported, Stone, Chairman, State Tax Commission *vs.* Memphis Steam Laundry Cleaner, Inc., 53 So. (2d) 89.

The jurisdiction of this Court to review the decision of the Supreme Court of Mississippi by direct appeal is conferred by Title 28 U. S. C. A., Section 1257(a).

Against the contention of the appellant that paragraphs (t) and (y), Section 45, Chapter 138, Mississippi Laws of 1944 violated Article I, paragraph 3, Section 8 of the Constitution of the United States providing that Congress shall

have the power to regulate commerce among the several states and against the contention that said paragraphs of Section 45, Chapter 138, Mississippi Laws of 1944 violated Section 1 of the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of life, liberty, and property without due process of law, nor deny to any person within its jurisdiction the actual protection of the law.

The Supreme Court of the state of Mississippi held that the Sections challenged were valid and did not violate either the commerce clause or the Fourteenth Amendment to the Constitution of the United States in the particulars mentioned.

Statement of the Case

The facts in the case appear without conflict from the pleadings. Upon the 9th day of March, 1950, the Memphis Steam Laundry Cleaner, Inc., appellant, exhibited its declaration in the Circuit Court, First Judicial District, Hinds County, Mississippi (R. 1-4). In its declaration the appellant alleged that it was a foreign corporation organized under the laws of the state of Delaware and engaged in operating a steam laundry and cleaner in Memphis in the state of Tennessee. Having received applications from persons in the state of Mississippi for its service, in response to such applications it sent its trucks into the state of Mississippi soliciting laundry and cleaning service to be transmitted to Memphis in the State of Tennessee. It at no time had an office, place of business, agent, employee or officer in the state of Mississippi. That it solicits and renders service to the people of Mississippi in ten counties immediately joining the City of Memphis, in response to solicitations from persons in Mississippi, by sending trucks through municipalities situated in said counties. The drivers of said trucks have no authority other than to solicit

laundry for transportation from the persons desiring appellants service to be transported to appellants plant in Memphis, Tennessee, and such commodities as are in response to the solicitations of the truck drivers are delivered to them and are brought to Memphis, Tennessee, serviced and returned to the owners thereof in the state of Mississippi, whereupon the truck driver collects a reasonable charge made by the appellant for such service upon the delivery of the commodity in the state of Mississippi. No part of the service is rendered in the state of Mississippi, all of which is had in Memphis in the state of Tennessee.

The appellant had sent ten trucks into the state of Mississippi for the purposes aforesaid, whereupon the appellee, Chairman of the State Tax Commission demanded of appellant the sum of $50.00 per annum from the driver of each truck soliciting laundry to be transported as aforesaid. That the appellee threatened to attach the property of the appellant and have its truck drivers arrested and criminally prosecuted unless the tax should be paid (R. 2-3). That said tax was demanded under paragraphs (t) and (w) Section 45, Chapter 138, Mississippi Laws of 1944 which levied a tax upon a person soliciting business for a laundry not licensed in the State, said subdivision (t) being in the following language:

> "Upon each person soliciting business for a laundry not licensed in this state as such, in each county $50.00."

In Paragraph (y), Section 45, the following provision is contained:

> "Provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business."

A copy of Section 45, Mississippi Laws of 1944 is hereto attached and made Appendix (1) to this statement. That by reason thereof, since the appellant sent ten trucks in the counties in the State of Mississippi contiguous to Memphis, Tennessee, a tax of $50.00 on each truck or $500.00 per annum was demanded. The appellant alleged that it was not liable for such tax, first because its activities were in interstate commerce and not subject to local taxation. Second, it alleged that it was not liable because Chapter 137, Section 110, Mississippi Laws of 1944, imposed a tax of only eight dollars ($8.00) upon each truck rendering the same service for laundry located in the State of Mississippi. said Section 110, containing the following language:

"Upon each person operating a laundry other than a hand laundry, as follows:

In municipalities of class 1	$120.00
In municipalities of class 2	80.00
In municipalities of classes 3 and 4	60.00
In municipalities of classes 5, 6, 7, and elsewhere in the county	32.00
Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located	8.00"

A copy of said Chapter 137, Section 110, Mississippi Laws of 1944 is made Appendix "3" to this statement. The appellant alleged and averred that subdivisions (t) and (y), Section 45, Mississippi Laws of 1944 create a discrimination between intrastate and interstate commerce and therefore said Sections (t) and (y) are void and unenforceable and the tax was not collected.

Third, the appellant alleged and averred that on account of such discrimination as between laundry located out of the State of Mississippi and domestic laundry (Sections (t) and (y) of the Section 45 of the Mississippi Laws of 1944

violate the Fourteenth Amendment to the Constitution of the United States in that by reason of such discrimination deprived the appellant of its property without process of law and denied to it equal protection (R. 2, 3, 4 and 5).

The appellant alleged that while it was not liable to the State of Mississippi for taxes by reason of the interstate nature of its transactions, the appellant paid to the proper taxing authorities required of a domestic corporation under Section 110, Chapter 137, Mississippi Laws of 1944 the sum of eight dollars ($8.00) on each truck (R. 3-5). The declaration alleged that the plaintiff paid the tax of five hundred dollars ($500.00), fifty dollars ($50.00) on each of ten trucks in order to prevent the arrest of its agents and servants coming in the State of Mississippi for interstate purposes and the seizure of its trucks. Judgment was prayed for in the sum of five hundred dollars ($500.00). The appellee filed an answer to the appellants declaration (R. 4-5-6-10). There was no denial on the part of appellee of any facts alleged in the plaintiffs' declaration. The case was tried before the Circuit Judge upon the undenied facts contained in appellants declaration with the result that upon the 20th day of June, 1950 judgment was rendered in favor of the appellant against the appellee for the sum demanded. The trial court held that the appellants activities were interstate in character and rendered a judgment in appellants favor for the sum of five hundred dollars ($500.00) (R. 8-11). The appellee prosecuted an appeal to the Supreme Court of Mississippi and upon the 11th day of June, 1951 the Supreme Court of Mississippi reversed the decision of the trial court, held that the activities of the appellant were not in interstate commerce, were local in nature, were free from discrimination, reversed the judgment of the lower court and entered a final judgment dismissing appellants declaration. The Court in doing so

assumed as true the facts alleged in appellant's declaration as stated herein (R. 17). This appeal is from the judgment of the Supreme Court of Mississippi reversing the judgment of the trial court.

The Supreme Court of the State of Mississippi overruled suggestion of error July 9, 1951 (R. 17). The appellant filed petition for appeal (R. 18) which was allowed July 20, 1951 (R. 18, 19). The appellant filed an assignment of error and prayer for reversal July 20, 1951 (R. 19-20). The appellant, in accordance with the rules of the Court, filed Statement of Jurisdiction, reference to which is now made. Citation issued and was served (R. 21). The appellant filed the Statement required by Rule 12 of this Court (R. 21). This court noted probable jurisdiction in the case on October 8, 1951, whereupon the appellant filed Statement of Points to be Relied upon (R. 22-23).

Specifications of Errors Assigned

1. Paragraph (t) and (y), Section 45, Mississippi Laws of 1944, as construed by the Supreme Court of Mississippi in this case violate paragraph 3, Section 8 of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian Tribes. In that the appellant was required to pay a privilege tax of $50.00 upon each truck as a condition precedent to engaging in interstate commerce between Memphis, Tennessee and points in the state of Mississippi.

2. Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, violate paragraph 3 Section 8 constitution of the United States providing that Congress shall have power to regulate interstate commerce in that the sections of said Act create discrimination between intrastate and interstate commerce by reason of the fact that a

person transacting such activity entirely within the State of Mississippi under Section 110, Chapter 137, Mississippi Laws of 1944 would pay only $8.00 on each truck and that appellant was required to pay $50.00 per truck in carrying on the same occupation.

3. Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, violate Section 1 of the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of life, liberty, and property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law; for that a person carrying on the same activity within the State of Mississippi as appellant does in interstate Commerce, was required to pay only a tax of $8.00 per truck whereas the appellant was required to pay a tax of $50.00 upon each truck while engaged in same occupation.

The foregoing questions were specifically raised and directed to the attention of the Court in the appellants declaration, pages, 2, 3, and 4.

The opinion of the Supreme Court of Mississippi expressly recognized that the appellant challenged the constitutionality of Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944 as being violative of the interstate commerce clause of the Constitution of the United States and that the appellant challenged said subdivisions of Section 45 Mississippi Laws of 1944 as creating a discrimination in favor of intrastate commerce as against interstate commerce, thereby violating interstate commerce clause of the Constitution of the United States as well as the 14th Amendment of the Constitution of the United States in the particulars mentioned and the decisions of the court was in favor of the validity of the Mississippi statutes, thus challenged and an express denial of the appellant's contentions.

The question is, therefore, squarely presented as to whether or not the activities of the appellant in the State of Mississippi constituted interstate commerce and as to whether or not paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, and Section 45, Chapter 137, Mississippi Laws of 1944, discriminate against interstate commerce and violate the Fourteenth Amendment to the Constitution of the United States. The court held that the appellant was liable for the tax provided under Paragraphs (t) and (y) of the act and dismissed the appellant's suit to recover the tax, which it would otherwise have been entitled to recover if the appellant's contentions in respect to the unconstitutionality of the acts involved are correct.

ARGUMENT

POINT I

Paragraphs (t) and (y) Section 45 Mississippi Laws of 1944, as Construed by the Supreme Court of Mississippi in This Case Violate the Commerce Clause of the Constitution of the United States.

The facts in this case have been succinctly stated and mere reference thereto should be sufficient.

The appellant operated a laundry and cleaner in the State of Tennessee, having invitations from persons residing in counties in the State of Mississippi for its service, sent its trucks in charge of employees into ten counties in the State of Mississippi; such employees having no other authority than that of soliciting, picking up commodities to be laundered or cleaned, transporting the same from counties in Mississippi to Memphis in the State of Tennessee, where the same are serviced, and returned to the communities where gathered, a reasonable compensation fixed by the appellant collected at the time of delivery and paid to the appellant in

the City of Memphis. No part of the service is performed in Mississippi.

The act of the Legislature of the State of Mississippi in this case complained of imposes a tax of Fifty Dollars ($50) annually upon each truck engaged in such service.

The license is a privilege tax for revenue purposes only, and is imposed as a condition precedent to the appellant rendering the service described.

The appellant has no officers, or agent, place of business, servant or employee in the State of Mississippi. Its sole relationship to the people in Mississippi for which it is sought to be taxed is that of soliciting, taking up and transporting to Memphis commodities to be serviced and returning the same to the State of Mississippi and the collection of a reasonable price therefor when delivered. That such business is interstate commerce could not be seriously denied.

Interstate commerce is a most comprehensive term. Commerce among the states consists of intercourse and traffic among their citizens, in all its branches, and includes the transportation of persons and property and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities.

Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S. 196, 1 Inters. Com. Rep. 382, 5 S. Ct. 826, 20 L. Ed. 158;
New York L. Insr. Co. v. *Deer Lodge County*, 231 U. S. 495, 34 S. Ct. 167, 58 L. Ed. 332;
Hammer v. *Dagenhart*, 247 U. S. 251, 38 S. Ct. 529, 3 A. L. R. 649, 62 L. Ed. 1101.

Commerce among the several states comprehends traffic, intercourse, trade, navigation, communication, the transit of persons, and the transmission of messages by telegraph and every species of commercial intercourse but not that

commerce completely internal, which is carried on between man and man, in a state, or between different parts of the same state, and which does not extend to or affect other states.

Commerce Commission v. *Brimson*, 154 U. S. 447, 14 S. Ct. 1125, 38 L. Ed. 1047.

Commerce is not traffic alone, it is intercourse; it describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse.

Blumenstock Bros. Adv. Agency v. *Curtis Publishing Co.*, 252 U. S. 436, 40 S. Ct. 385, 64 L. Ed. 649; *Gibbons* v. *Ogden*, 9 Wheat. 1, 6 L. Ed. 23.

Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its terms, including that transportation, purchase, sale and exchange of commodities between the citizens of our country and the citizens or subjects of other countries, and between the citizens of different states.

Welton v. *Missouri*, 91 U. S. 275, 23 L. Ed. 347.

The term "commerce" in the constitutional provision giving Congress power to regulate commerce among the several states comprehends more than the mere exchange of goods; it embraces commercial intercourse in all its branches, including transportation of passengers and property by common carriers, whether carried on by water or by land.

Mondou v. *New York, H. H. & H. R. Co.*, 223 U. S. 1, 32 S. Ct. 169, 56 L. Ed. 327.

Interstate commerce is not confined to transportation but comprehends all commercial intercourse between different

states and all component parts of such intercourse, including the buying and selling of commodities for shipment from one state to another.

Federal Trade Commission v. *Pacific States Paper Trade Assoc.*, 273 U. S. 52, 47 S. Ct. 255, 71 L. Ed. 534.

Interstate commerce comprehends all the component parts of commercial intercourse between different states.

Furst v. *Brewster*, 282 U. S. 493, 51 S. Ct. 295, 75 L. Ed. 478.

Trading in news carried on among the states is interstate commerce.

Associated Press v. *U. S.*, 326 U. S. 1, 89 L. Ed. 2013.

Regulating the business of the publishers of newspapers having interstate circulation is interstate commerce and within the power of Congress to regulate.

Oklahoma Publishing Co. v. *Walling*, 327 U. S. 186, 90 L. Ed. 614, 166 A. L. R. 531.

Interstate commerce includes broadcasting over the radio, as well as television.

National Broadcasting Company v. *U. S.*, 319 U. S. 190, 87 L. Ed. 1344;
New Mexico College v. *Alberque*, 10th Cir. 158 Fed. Supp. 900;
Bamberger Broadcasting Company v. *Oloff*, 44 Fed. Supp. 904;
Tampa Times Company v. *Bernett*, 45 Fed. Supp. 166.

The following authorities establish that the tax which the appellant was required to pay was a direct burden upon

interstate commerce and a discrimination between interstate and domestic commerce.

In the case of *Spector Motor Service Inc.*, v. *O'Connor*, 340 U. S. 602, 95 L. Ed. 573, the appellant was engaged in interstate transportation through the state of Connecticut. It was authorized so to do by the Interstate Commerce Commission and the Connecticut Utilities Commission. It had filed a certified copy of its Charter with the Secretary of State of the State of Connecticut, appointed an agent for service of process. It did no intrastate business in Connecticut. It would transport interstate shipment into Connecticut, pick up property in Connecticut for interstate shipment. The Supreme Court of Connecticut held that it was subject to the same franchise of being engaged in intrastate commerce. The Supreme Court of the United States held otherwise, reversed the judgment of the Supreme Court of Connecticut, using the following language:

> "Taxing power inherent in sovereign states, yet the states of the United States have divided their taxing power between the Federal Government and themselves. They delegated to the United States the exclusive power to tax the privilege to engage in interstate commerce, when they gave Congress the power 'to regulate Commerce with foreign Nations and among the several states' . . . U. S. Const. Art. one, Sec. 8, Cl. 3. While the reach of the reserved taxing power of a state is great, the constitutional separation of the federal and state powers makes it essential that no state be permitted to exercise without authority from Congress those functions which it has delegated exclusively to Congress * * *."
>
> "This Court heretofore has struck down, under the commerce cause, state taxes upon the privilege of carrying on a business that was exclusively interstate in character. The constitutional infirmity of such a tax persists no matter how fairly it is apportioned to business done within the State. Alpha Portland Ce-

ment Co. v. Mass., 268 U. S. 203, 69 L. Ed. 916, 45 S. Ct. 477, 44 A. L. R. 1219 (measured by percentages of 'corporate excess' and net income); Ozark Pipe Line Corp. v. Monier, 266 U. S. 555, 69 L. Ed. 439 St. Ct. 184 (measured by percentage of capital stock and surplus)."

The dissenting opinion of Chief Justice Vincent in the case of *Breard* v. *City of Alexandria*, 431 U. S. 62, 95 L. Ed. 1238 is illustrative.

In the case of *Dean Milk Company* v. *City of Madison*, 340 U. S. 349, 95 L. Ed. 329, the City of Madison, Indiana passed an ordinance prohibiting the importation of milk unless processed at a plant within a radius of five miles from the City. The court held that the ordinance was a violation of the interstate commerce clause, using the following language:

> "To permit Madison to adopt a regulation not essential for the protection of local health interests and placing a discriminatory burden on interstate commerce would invite a multiplication of preferential trade areas destructive of the very purpose of the Commer Clause. Under the circumstances here presented, the regulation must yield to the principle that 'one state in its dealings with another may not place itself in a position of economic isolation'. Baldwin v. G. A. F. Seelig Inc., Supra (294 U. S. at 527, 79 L. Ed. 1040, 55 S. Ct. 497, 101 A. L. R. 55).
>
> For these reasons we conclude that the judgment below sustaining the five-mile provision as to pasteurization must be reversed."

To the same effect see *Hood* v. *Dumond*, 336 U. S. 525, 93 L. Ed. 865.

The case of *Freeman* v. *Hewit*, 329 U. S. 249, 91 L. Ed. 265 is directly in point. In that case the trustee of an estate, domiciled in Indiana, instructed an Indiana broker to ar-

ge for the sale of certain securities forming part of the
ate, at a certain price. The broker from Indiana, through
v York correspondence affected the sale in the New York
k exchange. When a purchaser was found, the Indiana
ker was notified, who in turn, informed the trustee and
latter delivered the securities to the broker for mailing
New York. Upon being delivered in New York to the
rchaser, the purchase price was paid and transmitted to
Indiana broker. The same, less commission, was turned
r to the trustee. The court held that the tax was one
on interstate commerce. The court used the following
guage:

"Of course a State is not required to give active advantage to interstate trade. But, it cannot aim to control that trade even though it desires to control its own. It cannot justify what amounts to a levy upon the very process of commerce across state lines by pointing to a similar hobble on its local trade. It is true that the existence of a tax on its local commerce detracts from the deterrent effect of a tax on interstate commerce to the extent that it removes the temptation to sell the goods locally. But the fact of such a tax, in any event, puts impediments upon the currents of commerce across the State line, while the aim of the commerce clause was precisely to prevent states from exacting toll from those engaged in National commerce".

In the case of *Lazarus Joseph v. John T. Clark & Son*, 330 S. 422 91 L. Ed. 993, the court held:

"The commerce clause precludes the leveling of a tax under state authority upon the gross receipts of stevedoring companies from loading and unloading vessels employed in interstate or foreign commerce, or upon the privilege of conducting such business measured by those gross receipts. (*Puget Sound Stevedoring Co. v. Tax Commission*, 302 U. S. 90, 82 L. Ed. 68, 58 S. Ct. 72, reaffirmed)".

In the case of *Nippert* v. *City of Richmond*, 327 U. S. 416, 90 L. ed. 760, an ordinance of the City of Richmond laid a tax upon persons soliciting orders for merchandise to be shipped from out of the state. No separate tax was laid in respect to intrastate business. The Supreme Court of the United States held that the tax was illegal, using the following language:

> "The tax here in question inherently involved too many probabilities, and we think actualities for exclusion of or discrimination against interstate commerce, in favor of local competing business, to be sustained in any application similar to the present one. Whether or not it was so intended, those are its necessary effects. Indeed, in view of that fact, and others of common knowledge, we cannot be unmindful, as our predecessors were not when they struck down the drummer taxes, that these ordinances lend themselves peculiarly to creating those very consequences or that in fact this is often if not always the object of the local commercial influences which induce their adoption. Provincial interests and local political power are at their maximum weight in bringing about acceptance of this type of legislation. With the forces behind it, this is the very kind of barrier the commerce clause was put in the fundamental law to guard against . . . ."

The case of *Best & Co.* v. *Maxwell*, 311 U. S. 454, 85 L. ed. 275 is directly in point. In that case, the appellant, a New York retail merchant displayed samples in a hotel room in North Carolina, taking orders for goods corresponding to the samples to be filled by shipping direct to the customer from New York City. The appellant was obliged to pay a tax of $250.00 levied on every person or corporation not a retail merchant in the state displaying samples in any hotel room rented or occupied temporarily for the purpose of securing retail orders. The appellant was not a

regular retail merchant and paid the tax under protest and sued to recover same asserting that the act was unconstitutional. Recovery was held in the trial court which the Supreme Court of North Carolina reversed. In reversing the judgment of the Supreme Court of North Carolina, the Supreme Court of the United States used the following language:

> "The only corresponding fixed-sum license tax to which appellant's real competitors are subject is a tax of $1 per annum for the privilege of doing business. Nonresidents wishing to display their wares must either establish themselves as regular North Carolina retail merchants at prohibitive expense, or else pay this $250 tax that bears no relations to actual, probable sales but must be paid in advance no matter how small the sales turn out to be. Interstate commerce can hardly survive in so hostile an atmosphere. A $250 investment in advance, required of out of state retailers but not of their real local competitors, can operate only to discourage and hinder the appearance of interstate commerce in the North Carolina retail market. Extra-state merchants would be compelled to turn over their North Carolina trade to regular local merchants selling by sample. North Carolina regular retail merchants would benefit, but to the same extent the commerce of the Nation would suffer discrimination.
>
> "The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businessgs, whatever may be the ostensible reach of the language.
>
> "Judgment reversed."

In the case of *Cooney* v. *Telephone and Telegraph Company*, 294 U. S. 384, 79 L. ed. 934, the court held:

> "The fact that a portion of a business is intrastate and taxable does not justify a tax upon the interstate

business or upon the whole business without discrimination."

In the case of *Real Silk Hosiery Mills* v. *City of Portland*, 268 U. S. 325, 69 L. ed. 982, the court held unconstitutional as violative of the interstate commerce clause of the Constitution of the United States a state statute of the state of Oregon requiring persons soliciting orders for goods for paid delivery and receiving payment or any deposit of money in advance to secure a license and give bond condition for final delivery of goods ordered. The statute cannot be justified although there was an express purpose to prevent possible fraud.

In the case of *Davis* v. *Virginia*, 236 U. S. 697, 59 L. ed. 795, the appellant solicited orders on blanks furnished by his employer for the taking of portraits, sending them out of the state, and redelivering the same in an appropriate frame. The contract therefor was signed in the state, sale made in the state, but the service contracted for was performed entirely out of the state. The Supreme Court of the United States held that the contract was interstate commerce and not subject to taxation, using the following language:

> "The court below thought that the purchase of the frames was to be regarded as a separate transaction occurring wholly in Virginia. Whether or not this was its technical aspect as an executed contract, it often has been pointed out that commerce among the states is a practical, not a technical, conception. The preliminary contract bound the company to furnish a chance to take a frame with the portrait. Obviously it was contemplated that the frame would be sent from New York as well as the pictures, as in practice they were, and although the bargain was not complete until the company's offer was accepted in Virginia the furnishing of the opportunity was a part of the interstate transaction; from the point of view of commerce the

business was one affair. Dozier v. Alabama, 218 U. S. 124, 54 L. ed. 965; 28 L.R.A. (N.S.) 264, 30 S. Ct. Rep. 649. Crenshaw v. Arkansas, 227 U. S. 387, 57 L. ed. 565, 32 S. Ct. Rep. 294; Browning v. Waycross, 233 U. S. 16, 21, 58 L. ed. 828, 34 Sup. Ct. Rep. 578."

"Judgment reversed."

In the case of *Crenshaw* v. *State of Arkansas*, 227 U. S. 389, 57 L. ed. 565, the appellants, Crenshaw and Galloway were convicted under statutes of the State of Arkansas which imposed a tax of $200 for selling or peddling samples for ranges, and took orders therefor. Crenshaw acted as delivery man, delivered ranges to persons who had previously given orders. The appellants were convicted for not having purchased a license and were held by the Supreme Court of the State of Arkansas to be peddlers. The Supreme Court of the United States in reviewing the case cited with approval *Robbins* v. *Taxing District*, 30 L. ed. 694, 120 U. S. 489; *Brennon* v. *Titusville*, 153 U. S. 289, 38 L. ed. 719; *Caldwell* v. *North Carolina*, 187 U. S. 22, 47 L. ed. 336; *Rearick* v. *Pa.*, 203 U. S. 507, 51 L. ed. 295; *Dozier* v. *Alabama*, 218 U. S. 124, 54 L. ed. 965.

The language used by the Supreme Court of the United States is applicable here because the Supreme Court of Mississippi held that the business of the appellant in coming into Mississippi and soliciting laundry to be taken out of the state for servicing was peddling.

The Court used the following language:

"In the Emert case, therefore, there was no movement of goods in interstate commerce because of orders taken for their sale, but the specific articles carried about by the peddler and none other were sold and delivered by him. In the majority opinion of the Supreme Court of Arkansas the definition of hawkers and peddlers, as understood at common law, was recognized—as one who goes from house to house or place

to place, carrying his merchandise with him, which he concurrently sells and delivers (2 Bouvier's Law Dict. 642) but it was said that the Legislature of Arkansas might define the word 'peddler' so as to include such as traveled from place to place and took orders for goods from other states, and that such persons, because of the statute declaring them so, were peddlers, and liable to be taxed under the lawful exercise of the police power of the state. We must look, however, to the substance of things, not the names by which they are labeled, particularly in dealing with rights created and conserved by the Federal Constitution in the decisions of this court. At common law and under the statutes which have been sustained concerning peddlers, they are such as travel from place to place, selling the goods carried about with them; not such as to take orders for the delivery of goods to be shipped in the course of commerce. Here, as the facts show, the sample ranges carried about from place to place were not sold. Orders are taken and transmitted to the manufacturer in another state for ranges to be delivered in fulfillment of such orders, which are in fact shipped in interstate commerce and delivered to the persons who ordered them. Business of this character, as well settled by the decisions of this Court, constitutes interstate commerce, and the privilege of doing it cannot be taxed by the state". . . .

In the case of *Galveston Railroad Company* v. *State of Texas*, 210 U. S. 217, 52 L. ed. 1031 there was imposed a gross income tax of one per cent upon the railroad whose line lay wholly within the state. As to a railroad company engaged in interstate commerce the court held that the tax was violative of the commerce clause of the Constitution of the United States, using the following language:

"The state cannot impose the tax levied by Texas Act of April 17, 1905, upon railway companies whose lines lie wholly within the state 'equal to 1 per centum of their gross receipts' where a part, and in some cases,

much the larger part, of these gross receipts, is derived from the carriage of passengers and freight coming from or destined to, points without the state."

The lines of the railroads concerned are wholly within the state, but they connect with other lines and a part, in some instances much the larger part, of their gross receipts is derived from the carriage of passengers and freight coming from or destined to points without the state. In view of this portion of their business, the railroads contend that the case is governed by Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, 1 Inters. Com. Rep. 308, 7 Sup. Ct. Rep. 1118. The counsel for the state rely upon Main v. Grand Trunk R. Co., 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163 and maintain, if necessary, that the letter overrules the earlier case. In Philadelphia & S. Mail S. S. Co. v. Pennsylvania, supra, it was decided that a tax upon the gross receipts of a steamship corporation of the state, when such receipts were derived from commerce between the states and with foreign countries was unconstitutional. We regard this decision as unshaken and as stating established law. It cites the earlier cases to the same effect."

In the case of *Caldwell* v. *State of North Carolina*, 187 U. S. 622, 47 L. ed. 336, the Supreme Court of the United States held to the same effect.

"An ordinance under which a license fee may be required for an agent of a nonresident portrait company, who requires from such company pictures and frames manufactured by it to fill orders previously obtained, and after breaking bulk and placing each picture in the frame designed for it, delivers them to the respective purchasers, is invalid as an attempt to interfere with and regulate interstate commerce."

In the case of *Dozier* v. *State of Alabama*, 218 U. S. 124, 54 L. ed. 965 a solicitor for a nonresident crayon company

solicited the taking of photographs to be sent to another state for reframing and returning for a cash consideration. The solicitor was convicted under the state law and on appeal to the Supreme Court of the United States the judgment was reversed, the court holding that the transaction was interstate commerce, using the following language:

> "We are of the opinion that the sale of the frames cannot be so separated from the rest of the dealing between the Chicago Company and the Alabama purchaser as to sustain the license tax upon it. Under the decisions, the statute, as applied to this case, is a regulation of commerce among the states, and void under the Constitution of the United States, Art. I, Section 8; Robbins v. Taxing Dist., 120 U. S. 489, 30 L. ed. 794, 1 Inters. Com. Rep. 45, 7 S. Ct. Rep. 592; Caldwell v. North Carolina, 187 U. S. 622, 47 L. ed. 326, 23 S. Ct. Rep. 229; Rearick v. Pa., 203 U. S. 507, 51 L. ed. 295, 27 S. Ct. Rep. 159."

In the case of *Crutcher* v. *Kentucky* (1891), 141 U. S. 47, 35 L. ed. — the court used the following language:

> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out license for carrying on interstate commerce no matter how specious the pretext may be for imposing it."

In the case of *Welton* v. *State of Mo.* (1875), 91 U. S. 275, 23 L. ed. 347, the Supreme Court held that a state was without authority to provide a license fee for the solicitation of merchandise to be shipped from without a state.

> "The power of the state to exact a license tax of any amount being admitted, no authority would remain in the United States or in this court to control its action however unreasonable or oppressive. Imposts operating as an absolute exclusion of the goods would be

possible, and all the evils of discrimination State legislation, favorable to the interests of one state and injurious to the interests of other states and counties, which existed previous to the adoption of the Constitution, might follow, and the experience of the last fifteen years shows would follow, from the action of some of the States."

In the case of *Webber* v. *Virginia* (1880), 103 U. S. 344, 26 L. ed. 565, there was involved a Virginia statute requiring agents for the sale of articles manufactured in other states to obtain a license and pay a tax in each county where he might sell, or offer to sell his goods. No such license was required of agents for domestic goods. The court, in striking down the act, used the following language:

"Her there is a clear discrimination in favor of home manufacturers and against the manufacturers of other states."

The original case upon the subject is *Robbins* v. *Tax District of Shelby County* (Tenn.), 120 U. S. 489, 30 L. ed. 694. There was a tax imposed upon persons soliciting the sale of merchandise to be shipped from out of the state into the state. Appellant solicited sales of merchandise in the City of Memphis for commodities to be shipped from out of the state, was arrested and convicted, his conviction was affirmed by the Supreme Court of Tennessee and was appealed to the Supreme Court of the United States, which reversed the judgment. The court used the following language:

"It would not be difficult, however, to show that the tax authorized by the State of Tennessee in the present case is discriminative against the merchants and manufacturers of other states. They can only sell their goods in Memphis by the employment of drummers and by means of samples; whilst the merchants and manufacturers of Memphis, having regular licensed

houses of business there, have no occasion for such agents, and if they had, they are not subject to any tax therefor. They are taxed for their licensed houses, it is true; but so, it is presumable, are the merchants and manufacturers of other states in the places where they reside; and the tax on drummers operates greatly to their disadvantage in comparison with the merchants and manufacturers of Memphis . . . ."

"To say that the tax, if invalid as against drummers from other states, operates as a discrimination against the drummers of Tennessee, against whom it is conceded to be valid, is no argument; because the state is not bound to tax its own drummers; and if it does so whilst having no power to tax those of other states, it acts of its own free will, and is itself the author of such discrimination. As before said, the state may tax its own internal commerce, but that does not give it any right to tax interstate commerce."

"The judgment of the Supreme Court of Tennessee is reversed and the plaintiff in error must be discharged."

A very illustrative case is that of *International Textbook Co. v. Pigg*, 217 U. S. 91, 54 L. ed. 678. In that case it appeared that the International Textbook Company from Scranton, Pa., conducted a correspondence school from which it taught selected courses in literature, arithmetic, science, and other questions. It solicited the sale of its system by correspondence by solicitation through agents. It sent an agent into the State of Kansas who secured a contract from a man by the name of Pigg to take the correspondence course of the appellant. The appellee, however, refused to pay for the services. Suit was brought in the State court in Kansas against the appellee for breach of contract. Appellee pleaded that the appellant was a foreign corporation; that it had not filed a copy of its charter with the Secretary of State of the State of Kansas, and, therefore, was prohibited from maintaining any suit in the

state court. Recovery was denied in the state court of Kansas and the Supreme Court of the United States held that the appellant was engaged in interstate commerce although it sent soliciting agents into the state who had procured the contract sued for. That is to say, in sending a representative into the state to solicit the sale of its services and procuring a contract, the appellant was not engaged in a local activity but was engaged in interstate commerce.

In reversing the judgment, the Supreme Court used the following language:

> "To carry on interstate commerce is not a franchise or privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities as a matter of convenience in carrying on their business cannot have the effect of depriving them of such right unless Congress should see fit to interpose some contrary regulation on the subject. Again, in the same case: 'would anyone pretend that a state legislature could prohibit a foreign corporation, an English or French transportation company—for instance,—from coming into its borders and landing goods and passengers at its wharves and soliciting goods and passengers for a return voyage, without first obtaining a license from some state officer, and filing a sworn statement as to the amount of its capital stock paid in? and why not? Evidently because the matter is not within the province of state legislation."

The case of *Carson* v. *Maryland*, 120 U. S. 502, 38 L. ed. 600 is directly in point. Mr. Justice Bradley, delivering the opinion of the court, used the following language:

> "The Code of Maryland, as amended in 1880, provides that 'no person or corporation other than the grower, maker or manufacturer shall barter or sell, or

otherwise dispose of, or shall offer for sale, any goods, chattels, wares, or merchandise within this state, without first obtaining a license in the manner herein prescribed'. A violation of this law was made an indictable offense; and the plaintiff in error, a citizen and resident of New York, was indicted for offering to sell and for selling by sample, in the city of Baltimore, without license, certain goods for a New York firm, to be shipped from New York, directly to the purchaser. The plaintiff in error demurred to the indictment, but it was sustained both by the court of original jurisdiction and by the Court of Appeals of Maryland on writ of error, the constitutionality of the law was duly raised, and the law was sustained. The same principles apply to this case which were considered in that of Robbins, and the same result must be declared."

In the case of *Stockard* v. *Morgan*, 185 U. S. 27, 46 L. ed. 785, the court held unconstitutional an act imposing a tax upon persons acting as agents for a nonresident firm or corporation for goods to be shipped by such nonresident principles, to purchasers in the State of Tennessee violative of the commerce clause of the Constitution of the United States.

In the case of *Stewart* v. *Michigan*, 232 U. S. 665, 58 L. ed. 787 the court used the following language:

"A state may not, consistently with the commerce clause of the Federal Constitution, impose a license tax upon a nonresident merchant traveling from place to place within the State, and soliciting orders by sample, lists, and catalogues for goods which are afterwards shipped into the state in carload lots to his order, and which he delivers from the cars to the persons ordering them."

The statute complained of involves no question of ad valorem tax. *Pittsburg & Southern Coal Company* v. *Bates*, 156 U. S. 577, 39 L. ed. 538.

The language used by the Court in *Spector Motor Service, Inc.*, v. *O'Connor, supra*, is entirely applicable; the court used the following language:

> "The objection to its validity does not rest on a claim that it places an unduly heavy burden on interstate commerce in return for protection given by the State. The tax is not levied as compensation for the use of highways or collected in lieu of an ad valorem property tax. Those bases of taxation have been disclaimed by the highest court of the taxing state. It is not a fee for an inspection or a tax on sales or use. It is a 'tax or excise' placed unequivocally upon the corporation's franchise for the privilege of carrying on exclusively interstate transportation in the State."

The Supreme Court of Mississippi did not hold that the tax was a lien tax and that a nonresident laundry would not be subject to an ad valorem tax if it owned property within the state. The mere fact, however, that the appellant owned no property located in the State of Mississippi and, therefore, paid no ad valorem tax could not justify the imposition of a discriminatory privilege tax for the transaction of interstate commerce.

Under Section 9744, 1942 Code, all property, whether real or personal in the State of Mississippi, upon the 1st day of January of each year is subject to ad valorem taxes. A copy thereof is made Appendix 4 to this brief.

There is nothing in the statute involved exempting the appellant from liability for such ad valorem taxes as it owned no property within the state upon the first day of January of any year. We desire to lay emphasis upon the discrimination; a truck serving a domestic laundry would be subject only to an $8.00 per annum tax in each county, which the appellant has paid, while upon the other hand, the appellant soliciting for its laundry situated out of the state is required to pay $50.00 upon each truck.

Cleveland, Cinn., Chicago & St. Louis Railway Co. v. *Baccus*, 154 U. S. 439, 38 L. ed. 1011.
Panhandle Pipeline Co. v. *Michigan Public Service Commission*, 341 U. S. 329, 95 L. ed. 993.
Bread v. *City of Alexandria*, 95 L. ed. 1233.
Gibbons v. *Ogden*, 9 Wheat. 1, 6 L. ed. 23.

Mississippi is profiting very greatly by reason of the advantages of trade afforded under the interstate commerce clause of the Constitution of the United States. The most extensive sea-food industry in the world is maintained on the Mississippi coast solely and exclusively by virtue of the protection of the interstate commerce clause of the Constitution of the United States under the interpretation of the Supreme Court of the United States. *Foster Fountain Packing Co.* v. *Haydel*, 278 U. S. 1, 73 L. ed. 149, 49 S. Ct. 1. Farmers in southern Mississippi furnish the city of New Orleans, Louisiana, as well as the city of Memphis, Tenn., with milk. During the present year an effort was made by the farmers in the State of Louisiana to prohibit the shipment of milk from the state of Mississippi into Louisiana. The officials of the State of Mississippi properly availed themselves of the rights of farmers in Mississippi under the commerce clause of the Constitution of the United States. They invoked successfully the case of *Hood* v. *Dumond*, 336 U. S. 525, 93 L. ed. 865, and a more recent case of *Dean Milk Co.* v. *Madison*, *supra*.

The furnaces in the steel mills of Birmingham, Alabama are heated by gas piped in interstate commerce from gas fields in Mississippi to the City of Birmingham, a right protected under the commerce clause of the Constitution of the United States as construed by the Supreme Court of the United States, *Pa.* v. *West Va.*, 262 U. S. 553, 67 L. ed. 1117, 32 A.L.R. 300.

The court completely overlooked the vital distinction in this case that the mere soliciting of laundry to be taken out of the state for service was not a local activity but interstate commerce and upon such distinction this case turns.

We call attention to the fact that in the present instance, interstate commerce is bearing its share of the burden, paying $8.00 per truck in each county, the same liability imposed upon resident citizens. It has done this regardless of liability therefor, and we call Your Honors' attention to the opinion of the Attorney General of Mississippi, in which opinion it is stated that if a nonresident laundry paid the local tax of $8.00, being the same imposed upon a resident, no greater burden could be imposed on it. See Appendix 4. The State Tax Commission followed the opinion of the Attorney General up until recently.

The state courts have uniformly held that the solicitation of laundry to be taken from one state into another is interstate commerce.

The Supreme Court of Kansas so held in the case of *Kansas City* v. *Seaman*, 160 Pac. 11.

The same was held in an appellate court in the State of New York, *People* v. *Vechion*, 276 N. Y. S. 705.

The Supreme Court of Kansas reached a same conclusion in *Comm.* v. *Pearl Laundry Co.*, 105 Kentucky 259, 49 S. W. 36.

From the foregoing it necessarily appears that the imposition of the tax was violative of the interstate commerce clause of the Constitution of the United States not only because interstate activities and commerce is not subject to taxation by the state, but because interstate commerce was discriminated against in that a citizen of the state might perform the same service for a laundry situated within the state upon payment of a tax of $8.00, that is to say, a laundry situated in the state might send trucks 200 miles, upon

the payment of $8.00 to each county, whereas the appellee was prohibited from engaging in an interstate transaction in the mere outskirts of Memphis except upon the payment of $50.00 in each county.

Point II

Subdivisions (t) and (y) Section 45, Mississippi Laws of 1944 violate the Fourteenth Amendment to the Constitution of the United States in the particulars hereinbefore mentioned.

For the reason that the operating of a domestic truck might have performed the same service within the state of Missjssippi regardless of the mileage upon the payment of a tax of $8.00 per truck for each county, whereas a tax of $50.00 per truck was demanded of appellant for each county.

It is very true that taxing statutes in dealing with the equality clause are subject to classification, but that does not mean that one tax may be imposed upon a resident, and a different tax imposed on a nonresident, for engaging in the same activity, and the authorities cited by appellant's counsel do not support this rule.

It is conceded in this case that there is demanded of the appellant a tax of $50.00 upon each truck, whereas the representative of a laundry from the most remote county in Mississippi could exercise the same privilege by paying $8.00 in each county.

Counsel cites the case of *Caskey Baking Co. v. Virginia*, 313 U. S. 117, 85 L. Ed. 1222.

In that case, a nonresident of the State of Virginia, by means of a truck transported bread into the State of Virginia and made sales of bread to persons desiring to buy the same from the truck.

The court justified a different privilege tax upon that ccupation from a wholesale merchant doing business in he state.

The court, speaking through Mr. Justice Roberts, in sustaining the Act, used the following language:

"While the transportation of bread across the State line is interstate commerce, that is not the activity which is licensed or taxed. The purely local business of peddling is what the Act hits, and this irrespective of the source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts. The appellant, however, urges that the Act discriminates against interstate commerce by exempting from its operation the privilege of sales by manufacturers paying tax on their capital employed in manufacture in Virginia. It is said that if its bakery were situate in Virginia the appellant would have the benefit of this exemption and since it is not, the marketing of appellant's goods shipped into the State is the target of a hostile discrimination, but the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the State or buy or procure them from extra-state sources are alike subject to the Act. The contention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions."

But no question of commerce was involved in that case. The question was one of classification as applied to intrastate commerce. Exactly the opposite is presented here.

The following authorities are directly in point.

A statute providing a higher tax for a nonresident than resident in carrying on the same business violates the 4th Amendment to the Constitution of the United States. *Frost* v. *Corporation Commission*, 278 U. S. 515, 73 L. Ed. 483; *Mayflower Farmers* v. *Tenecyck*, 297 U. S. 266, 80 L. Ed.

265; *F. S. Royster Guano* v. *Virginia*, 253 U. S. 412, 64 L. Ed. 989; *Hartford Boiler Insurance Company* v. *Howerton*, 301 U. S. 459, 81 L. Ed. 1223; *Maxwell* v. *Bugbee*, 250 U. S. 525, 63 L. Ed. 1124; *Hayes* v. *Missouri*, 120 U. S. 68, 30 L. Ed. 578.

In the case of *Bethlehem Motors Corporation* v. *George W. Flynt, et al.*, 256 U. S. 421, 65 L. Ed. 1029, the court held that a statute of the State of North Carolina violated both the 14th Amendment to the Constitution of the United States and of the Interstate Commerce Laws where statute required a tax of $3,000.00 for the sale of automobiles unless the manufacturer had three-fourths of its capital invested in the state, in which event the tax was only $500.00.

See *I. M. Darnell* v. *Memphis*, 52 L. Ed. 413, 208 U. S. 113. In the case of *Ward* v. *Maryland*, 12 Wall. 418, 20 L. Ed. 449, the court held that a state statute prohibiting the sale within a certain district of the state articles other than agricultural products and articles manufactured in the state by persons not residents of the state without first obtaining a license and paying therefor violated the Constitution. See also *Sully* v. *American National Bank*, 178 U. S. 289, 44 L. Ed. 1072. See also *Chalker* v. *Birmingham Railroad Company*, 249 U. S. 522, 63 L. Ed. 740; *Power Manufacturing Company* v. *Saunders*, 274 U. S. 490, 81 L. Ed. 1165; *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494, 71 L. Ed. 372, 49 A. L. R. 713; *Baltic Mining Co.* v. *Mass.*, 58 L. Ed. 127, 231 U. S. 68.

We call the Court's attention to the official opinion of the Attorney General of the State of Mississippi of August 1, 1940, advising the appellee in this case that no discrimination could be had between a resident or nonresident laundry. The Attorney General seemed to be of the opinion that a nonresident laundry should bear its proportionate

part of the burden and advised the State Tax Commission that if the nonresident laundry paid the $8.00 per truck no further tax should be required.

A copy of this opinion is hereto attached as Appendix 3.

The appellant has acquiesced in the opinion of the Attorney General of Mississippi and paid $8.00 on each truck and will continue to do so. The appellee is unwilling to abide by the opinion of the Attorney General of Mississippi.

Conclusion

We respectfully submit that Paragraphs (t) and (y), Section 45, Mississippi Laws of 1944 violate the interstate commerce clause of the Constitution of the United States as well as the first section of the Fourteenth Amendment to the Constitution of the United States, for the reasons hereinabove stated.

It is respectfully submitted that the judgment appealed from was erroneous and should be reversed.

Respectfully submitted,

C. E. Clifton,
Memphis, Tennessee;
W. H. Watkins,
Pat H. Eager, Jr.,
T. H. Watkins,
Attorneys for Appellant.

Certificate

I, W. H. Watkins, of counsel for the appellant, in the above entitled case, certify that I have this day forwarded by United States Mail, postage prepaid to J. H. Sumrall, attorney for appellee, Jackson, Mississippi, a true and correct copy of the foregoing brief.

November 6, 1951.

W. H. Watkins,
Of counsel.

APPENDIX 1

Section 45, Chapter 138, Mississippi Laws of 1944.

Upon each person doing business as a transient vendor, or dealer, as defined in this section, and upon which a privilege tax is not specifically imposed by another section of this act, a tax for each county according to the following schedules:

(a) Upon each transient vendor, or dealer of candies, peanuts, salted or roasted nuts, ice cream or ice cream products, or any other confection	$10.00
(b) Upon each transient vendor, or dealer of spectacles	$25.00
(c) Upon each transient vendor, or dealer of fish, oysters, or other sea foods (except a fisherman selling his own catch)	$10.00
(d) Upon each transient vendor, or dealer of batteries of motor vehicles	$15.00
(e) Upon each transient vendor or dealer of radios, phonographs, phonograph records, pianos or other musical instruments	$20.00
(f) Upon each transient vendor, or dealer of patent, proprietary secret or trademarked medicines, or nostrums, or ordinary household remedies, cosmetics, flavoring extracts, condiments, sauces and spices, when sold by methods other than described in (x)	$25.00
(g) Upon each transient vendor, or dealer of gasoline, kerosene, lubricating oil, or other petroleum products	$25.00

Provided that the provisions of this section shall not apply to transient vendors, or their agents, or representatives, in the sale or delivery of gasoline, oil, or similar petroleum products when drawn, conveyed and distributed from a stock maintained at a warehouse, oil depot, distribution station, or es-

tablished place of business in this state, upon which has been paid all privilege taxes required.

(h) Upon each transient vendor or dealer of coffee, tea, flavoring extracts, condiments, sauces or spices, when such transient vendor sells at wholesale to retail dealers only, for each county $25.00

(i) Upon each transient vendor, or dealer of coffee, tea, flavoring, extracts, condiments, saurces or spices, when such transient vendor sells at retail to consumers, for each county $50.00

Provided, further, that a dealer or transient vendor who sells to both consumers and retailers, shall be liable for the $50.00 tax.

(j) Upon each transient vendor, or dealer of dry goods, including ready-to-wear clothes, bed spreads, table cloths, etc., small rugs, or other small articles of furniture $25.00

(k) Upon each transient vendor, or dealer of household or kitchen utensils, brooms, pots, pans, dishes, knives, forks, spoons, or small hardware such as rakes, hoes, or hand garden tools $50.00

(l) Upon each transient vendor, or dealer of motor vehicle accessories, motor vehicle parts or motor vehicle tires $10.00

(m) Upon each transient vendor, or dealer in anthracite or bituminous coal or coke $100.00

(n) Upon each transient vendor or dealer of bread, rolls, cakes, pies or other bakery products, except those acting for a bakery duly licensed in this state, in each county $50.00

(o) Upon each transient vendor, or dealer of cigarettes, cigars, or other tobaccos $50.00

(p) Upon each transient vendor, or dealer of raw furs $50.00

(q) Upon each transient vendor or dealer in jewelry $50.00

(r) Upon each transient vendor or dealer of soda water, coca-cola, pepsi-cola, chero-cola, ginger ale, grape and other fruit juices, or imitations thereof, carbonated or other beverages, or like preparations commonly known as soft drinks, acting for a person not licensed in this state, in each county $100.00

(s) Upon each transient vendor, or dealer engaged in the business of renting or leasing towels, pillow cases, sheets, bed spreads, or other similar articles, not licensed in this state, in each county $50.00

(t) Upon each person soliciting business for a laundry not licensed in this state as such, in each county $50.00

(u) Upon each transient vendor, or dealer of a general line of goods, wares and merchandise usually carried for sale in a general mercantile store, upon each truck operated whereon general merchandise is carried, in each county $85.00

Provided that where a general line of merchandise is carried, the several taxes levied herein on specific articles or classes of merchandise shall not apply.

(v) Upon each transient vendor, or dealer of fruits, vegetables or other produce, in each county $50.00

Provided, however, that when perishable fruits and vegetables are sold from a plant, warehouse, or built-in refrigeration plant, situated in this state, assessed at not less than $3,000.00 upon which a proper tax has been, or is being, paid, the tax imposed upon a transient vendor, dealer or sales-

man of such perishable fruits and vegetables shall then be $10.00 for each county.

(w) Upon each transient vendor, or dealer of any goods, wares or merchandise not elsewhere specifically taxed in each county $20.00

(x) Upon each transient vendor, or dealer of patent, proprietary, secret, or trade-marked medicines, or nostrums by whatever name called, and whether or not such medicines are sold or disposed of in or through the store of a druggist or merchant, when sold, advertised, offered for sale, or traded by harangue, or through or by means of minstrels, exhibitions, attractions, shows, or amusements in any form, in each county $250.00

Provided that each natural person doing business as a transient vendor, or dealer traveling on foot shall pay one-fifth (1/5) of the amount set out in the above schedule.

(y) provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business.

APPENDIX 2

Section 110, Chapter 137 Mississippi Laws of 1944.
Appendix 2 to Statement of jurisdiction.
Upon each person operating laundry other than a hand laundry, as follows:

In municipalities of class 1	$120.00
In municipalities of class 2	$80.00
In municipalities of classes 3 and 4	$60.00
In municipalities of classes 5, 6, 7, and elsewhere in the county	$32.00
Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located	$8.00

APPENDIX 3

Mr. E. R. Prenshaw, Chief
License and Tobacco Tax Division
State Tax Commission
Jackson, Mississippi

DEAR SIR:

Under date of August 31st, I have your inquiry as to the amount of privilege tax levied by the privilege Tax Act of 1940 on agents of a Laundry located outside of the State of Mississippi when the agents are soliciting laundry in the State of Mississippi.

OPINION

Section 123, Privilege Tax of 1940, levies a privilege tax "Upon each person operating a laundry other than a hand laundry, as follows":

The tax then levied is graduated in amount according to the population of the municipality in which the laundry was located. Said Section then levies a tax "upon each agent for such laundry in a municipality other than where the laundry is located, $8.00."

Section 221 of said act levies a privilege tax upon each person doing business as a transient vendor or dealer. The term "transient vendor" is defined.

Paragraph (t) of said section levies a privilege tax as follows: "Upon each person soliciting business for a laundry not licensed in said state as such, in each county, $50.00".

The definition of a transient vendor or dealer as set out in said section is not broad enough to cover a person soliciting for a laundry and it is rather uncertain as to whether this tax would be valid at all.

The law is well settled that a state cannot by levying a tax, discriminate between citizens, products or businesses carried on in other states. It is true that the tax levied by Paragraph (t) is not specifically limited to an agent of a laundry located outside of the state. However, all laundries located within the state are required to pay a tax under the provisions of Section 123 and it could not apply to a laundry located in the state. Unless an out of state laundry is permitted to pay the tax levied by Section 123, and pay the tax levied on its agents by said section, it is clear that the provisions of said paragraph (t) would discriminate against the out of state laundries, and for this reason said paragraph (t) would be invalid and unconstitutional.

It further appears that the tax levied by said Section 221 is only levied on transient vendors or dealers who are not specifically taxed by another section. Said Section 123 specifically taxes the agents of laundries, whether operating within this state or without this state.

I therefore advise that where a laundry is located outside of the state and sends its agents into the state to solicit laundry, the laundry could pay the tax on laundries as is levied by Section 123 and on its agents under the provisions of said section, in which event it would not be liable for the taxes levied by Section 221 (t). If the out of state laundry does not pay the tax levied on laundries under the provisions of Section 123, then it would be liable for the tax levied on its agents by said Section 221 (t).

Biennial Report of the Attorney General 1939-41, page 92.

Sec. 9744. Taxes, a lien; from what date.—Taxes, State, county, and municipal, assessed upon lands or personal property, shall bind the same, and be entitled to preference over all judgments, executions, incumbrances, or liens, whensoever created; and all taxes assessed shall be a lien upon and bind the property assessed, from the first day of January of the year in which the assessment shall be made; and no property shall be exempt from distress and sale for taxes. And it shall not be necessary to the validity of an assessment, or of a sale of land for taxes, that it shall be assessed to its true owner; but the taxes shall be a charge on the land or personal property taxed, and the sale shall be a proceeding against the thing sold, and shall vest title in the purchaser, without regard to who may own the land or other property when assessed or when sold, or whether wrongfully assessed, either to a person, or to the State, or any county, city, town, or village, or subdivision of either. Provided, however, that the lien for municipal taxes shall be secondary and subordinate to the lien for State and county taxes.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,
Appellant,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI,
Appellee

REPLY BRIEF OF THE APPELLANT

C. E. CLIFTON,
Memphis, Tennessee;
W. H. WATKINS, SR.,
P. H. EAGER, JR.,
T. H. WATKINS,
Jackson, Mississippi,
Attorneys for Appellant.

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SUPREME COURT OF THE UNITED STATES

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MEMPHIS STEAM LAUNDRY CLEANER, INC.,
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Appellee

REPLY BRIEF OF THE APPELLANT

The statement of facts in brief of counsel for the appellee demonstrates that the appellant's transactions were in interstate commerce.

It is true that appellant's servants came into the State of Mississippi and picked up commodities to be processed out of the state. It must be borne in mind, however, that the appellant's agents operating trucks came into the State of Mississippi at the solicitation of persons in Mississippi desiring the appellant's service and such commodities as were delivered to them were for the express purpose of being transported to Memphis in the State of Tennessee, there processed and returned to the State of Mississippi; that such transactions constitute commerce is not subject to question.

Counsel for appellee cites no case from this court. To the contrary, cites the case of *Jewel Tea Company* v. *City of Troy*, 7 Cir. 85 Fed. 2nd 366. In that case the driver of the truck was delivering merchandise to various persons pursuant to orders previously taken, but as the court pointed out the act was not a revenue measure, but one for the purpose of meeting the expense of inspection and regulation of such vehicles, in respect to which the court used the following language:

> "Appellant's main contention is that the ordinance in question, as applied to appellant and its business in Troy, is a revenue raising device, constituting a burden upon interstate commerce, and is not enforceable against appellant. The interstate character of appellant's business is not controverted; nor is it disputed that if the ordinance imposed a fee or tax for revenue purposes it would not be enforceable against appellant. Interstate commerce may not be subjected to the burden of local taxation. Minnesota v. Blasius, 290 U. S. 1, 54 S. Ct. 34, 78 L. Ed. 131. But it is clear that if the fee is designed for the purpose of meeting the expense of such inspection and regulation of vehicles in the interest of the public health, it is not assailable as a burden upon interstate commerce. Standard Stock Food Co. v. Wright, 225 U. S. 540, 32 St. 784, 56 L. Ed. 1197; Atlantic & Pacific Tel. Co. v. City of Philadelphia, 190 U. S. 160, 166, 23 S. Ct. 817, 47 L. Ed. 995. We are here, therefore, concerned mainly, if not entirely, with the scope an effect of this particular ordinance, and the purpose for which the license fee is imposed."

It is conceded in this case that the tax is one for raising general revenue. The Act is found in the General Privilege Tax Act of the State of Mississippi, made Appendix one to appellant's brief at page 33.

The tax here involved is not for the purpose of inspection or for the use of the highways. It is not a regulatory tax.

The tax is not imposed in the exercise of the police power of the State for the protection of the health, well being or morals of the people, and neither is the tax one in lieu of an ad valorem tax, all of which we have pointed out in our original brief. Upon the other hand, the appellant pays a tax to the Motor Vehicle Commissioner for the upkeep of the highways. Under paragraph 23, Section 9353 there is found the definition of a private commercial carrier of property by motor vehicle. A copy of the Section is hereto attached as Appendix I. The appellant, in the operation of its trucks, falls within the definition of a private carrier. Under paragraph 5, Section 9354, a tax is imposed upon the appellant and it is required to pay the tax as a private carrier of property. A copy of said Section 9354, paragraph 5 is attached hereto as Appendix II. This tax is equally applicable to residents of the state. The tax involved in this case is in the last analysis, placed upon the appellant because in response to the solicitation of people in Mississippi it exercises the privilege of receiving in the State of Mississippi and transporting to the State of Tennessee for processing, cloth[illegible] and returning the same to the owners thereof in Mississippi, which activity constitutes interstate commerce.

The Tax Objected to Is One in the Last Analysis upon the Privilege of Receiving in the State of Mississippi and Transporting to the State of Tennessee for Processing Commodities and Returning the Same to the Owners Thereof.

The situation may not be distinguished from that of *Nippert* v. *City of Richmond*, 327 U. S. 416, 90 L. Ed. 760 where persons solicited orders for merchandise to be shipped from out of the state, or from the case of *Best & Co.* v. *Maxwell*, 311 U. S. 454, 85 L. Ed. 275, where a New York

retail merchant displayed samples in a hotel room in North Carolina, taking orders therefor to be shipped direct to the customer from New York City. In each case the court held that the tax was a burden upon interstate commerce and unenforceable.

Counsel lays some emphasis upon the fact that the appellant's agent solicited the service in the State of Mississippi. Nevertheless the solicitation was for the purpose of obtaining commodities to be transported to the State of Tennessee for servicing and return.

A burden may not be imposed upon the appellant engaged in interstate commerce by designating the tax as peddling or the occupation that of a transient vendor.

The court disposed of such contention in the case of *Crenshaw* v. *Arkansas*, 227 U. S. 389, 57 L. Ed. 365 wherein in pursuance of orders previously taken the company's agent went into the State of Arkansas delivering the commodities purchased. The Supreme Court of Arkansas held that such constituted peddling; in which respect the court said:

> "We must look, however, to the substance of things, not the names by which they are labeled, particularly in dealing with rights created and conserved by the Federal Constitution in the decisions of this court. At common law and under the statutes which have been sustained concerning peddlers, they are such as travel from place to place, selling the goods carried about with them; not such as to take orders for the delivery of goods to be shipped in the course of commerce. Here, as the facts show, the sample ranges carried about from place to place were not sold. Orders are taken and transmitted to the manufacturer in another state for ranges to be delivered in fulfillment of such orders, which are in fact shipped in interstate commerce and delivered to the persons who ordered them. Business of this character, as well settled by the deci-

sions of this Court, constitutes interstate commerce, and the privilege of doing it cannot be taxed by the state."

Appellee's counsel, however, does not seriously question that the transactions in which appellant is engaged are other than in interstate commerce and devotes a greater portion of his brief to the question of classification. Where an occupation is in interstate commerce, as appears from the authorities we have cited in our original brief the same is not subject to a privilege tax, where the tax is one purely for revenue as in the present instance. It is considered that in this case the tax is for revenue only.

Counsel spends a greater portion of his brief in discussion of the case of *Caskey Baking Company* v. *Virginia*, 313 U. S. 117, 85 L. Ed. 1222. No question of interstate commerce was involved in that case whatsoever. Upon the other hand, a non-resident of the State of Virginia, by truck, transported bread into the State of Virginia and sold it direct to persons in the state desiring to purchase the same. There was no element of interstate commerce. The occupation was that of peddling or transient vendor. The taxpayer complained, however, because manufacturers in the State of Virginia paying tax on their capital employed in the state were exempt therefrom.

Since the tax was not on interstate commerce, but a local tax on peddlers, the question of classification was very relevant. This court, however, made it very clear that persons engaged in the same business as the appellant in the State of Virginia, was subject to the tax. The court used the following language:

". . . But the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the State or buy or procure them from extra-state sources, are alike subject to the Act. The con-

tention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions."

Coming to the question of the violation of the Fourteenth Amendment by reason of the fact that a person soliciting for a laundry within the state need only pay a tax of $8.00 on each truck, whereas upon a non-resident person the tax is $50.00 per truck.

Counsel is unable to cite any case justifying a classification based upon the difference between the resident of the state and a non-resident of the state.

We presented such authorities in our original brief, beginning on page 30.

There is no contention that the tax collected was in lieu of an ad valorem tax. If the appellant had owned property in the State of Mississippi upon the first day of January of any year the same would have been subject to ad valorem taxes and at the same time it would have been required to pay the discriminatory privilege tax complained of in this case.

At page 39 of our original brief we copied Section 9784, Mississippi 1942 Code, from which it appears that if the appellant had owned property in the State on the first day of January of any year, such property would have been subject to an ad valorem tax and the fact that it paid a privilege tax would not have relieved it from liability therefor.

Appellee's counsel cites the case of *Southwestern Oil Company* v. *The State of Texas*, 217 U. S. 114, 54 L. Ed. 698. In that case the appellant was a wholesale dealer in oil in the State of Texas. It complained that wholesale dealers in other commodities were taxed upon a different basis. This court held that the classification was not arbitrary

and no discrimination was had. There was no question of interstate commerce involved in the case.

In the case of *Charles P. Cook* v. *County of Marshall*, 196 U. S. 261, 49 L. Ed. 471, the court held that the difference between a wholesale dealer and a retail dealer in cigarettes was a sufficient basis for classification and was not arbitrary. No question of interstate commerce was involved in that case.

Counsel for the appellee, at page 23 of his brief, used the following language:

> "It will also be noted that the language of the subsection imposing the tax on the solicitor for a laundry, limits the application of the tax to soliciting business 'for a laundry not licensed in this state as such'. And the construction of said subsection in connection with the provisions of Section 110, Chapter 137, Laws of 1944 has uniformly been that where a non-resident operator of a laundry or cleaner establishes an office or 'receiving station' within the state, and pays the local laundry license according to the graduated tax imposed in accordance with the size of the municipality in which such office or receiving station is operated, that such nonresident owner of such place of business would not be required to pay the $52.00 on each truck imposed on solicitors of laundry and cleaning for laundries not licensed in the state, and would only be required to pay the tax of $8.00 for each municipality in which the cleaning and laundrying was solicited, other than the one in which the laundry was licensed."

In this case the Supreme Court of the State of Mississippi has decided that the appellant, under the facts stated, was liable for the privilege tax provided under paragraphs (t) and (y), Section 45, Chapter 138, Mississippi Laws of 1944. Counsel cites no authority for a statement that if the appellant had established a laundry office or receiving station in the state it would not have been liable for the tax of

$50.00 per truck. But be that as it may, the appellant had the right to conduct its business as it saw fit in interstate commerce without establishing a receiving station in the State of Mississippi and its failure to do so, did not justify the tax imposed in this case.

Counsel called attention to the fact that the taxes imposed by Chapter 137 Mississippi Laws of 1944 are payable to the counties and municipalities; that the tax provided in Chapter 138, Mississippi Laws of 1944 are state wide taxes and are payable through the State Tax Commission. It is very true as shown in this record that the tax of $50.00 per truck required of the appellant was payable to the State Tax Commission and the State Tax Commission of course, was required to pay the money into the State Treasury. It is true that the tax under Chapter 137, Section 110, Laws of Mississippi, 1944 was payable to the county and municipality, but no difference could be predicated thereupon. In each instance the tax was provided by an enactment of the legislature of the State of Mississippi. The fact that in one instance the tax went to the State of Mississippi through the State Tax Commission and in the other instance to the county or municipality through local tax collectors would be without relevancy in this case. Under Section 110, Chapter 137, Mississippi Laws of 1944, a domestic company might solicit laundry from any point in the state for $8.00 per truck, whereas under Section 45, Chapter 138, Mississippi laws of 1944, $50.00 per truck, was imposed upon a non-resident. The fact that one tax is called a state wide tax and the other a local tax in no manner relieves the discrimination or justifies the imposition of a tax on interstate commerce. Each chapter originates with the legislature of the State of Mississippi and are equally binding.

At page 24 of appellee's brief, the position is taken that the tax was only imposed upon the individual operating

the truck. It would have been very relevant for appellee's counsel to have presented that view to the Supreme Court of the State of Mississippi, however, that court held in the instant case that the appellant, a corporation, engaged in the business described through its employees, was subject to the tax. It is well settled that the construction given to a state statute by the highest judicial tribunal of such state is binding upon this court.

Waters-Pierce Oil Co. v. *Texas*, 177 U. S. 28, 20 S. Ct. 518, 44 L. Ed. 657; *Nobles* v. *Georgia*, 168 U. S. 398, 18 S. Ct. 87, 42 L. Ed. 515; *St. Louis, I. M. & S. R. Co.* v. *Paul*, 173 U. S. 404, 19 S. Ct. 419, 43 L. Ed. 746; *Northern P. R. Co.* v. *Meese*, 239 U. S. 642, 36 S. Ct. 223, 60 L. Ed. 467; *Winchester* v. *Winchester Waterworks Co.*, 251 U. S. 192, 40 S. Ct. 123, 64 L. Ed. 221; *Farmers Irrig. Dist.* v. *Nebraska ex rel. O'Shea*, 244 U. S. 325, 37 S. Ct. 630, 61 L. Ed. 1168; *New York ex rel. New York & Q. Gas Co.* v. *McCall*, 245 U. S. 345, 38 S. Ct. 122, 62 L. Ed. 337; *La Tourette* v. *McMaster*, 248 U. S. 465, 39 S. Ct. 330, 63 L. Ed. 362; *Vigliotti* v. *Pennsylvania*, 258 U. S. 403, 42 S. Ct. 330, 66 La. Ed. 686; *Supreme Lodge, K. P.* v. *Meyer*, 265 U. S. 30, 44 S. Ct. 432, 68 L. Ed. 885; *Supreme Lodge, K. P.* v. *Eiser*, 265 U. S. 41, 44 S. Ct. 436, 68 L. Ed. 891.

Chapter 689, Mississippi 1942 Code, holds that the word persons includes artificial as well as natural persons. The statute contains the following language:

> "Person.—The term 'person', when used in any statute, shall apply to artificial as well as natural persons;"

In the case of *Hattiesburg Grocery Company* v. *Robertson*, 126 Miss. 34, 88 So. 4, Suggestion of Error overruled 126 Miss. 655, 89 So. 369, 25 A. L. R. 755, Writ of error dismissed, 260 U. S. 710, 67 L. Ed. 475, it is held that an income tax imposed upon persons included corporations.

We respectfully submit that (1) the appellant was engaged in interstate commerce and the tax complained of violates the interstate commerce clause of the Constitution of the United States. (2) Since the resident of a state could perform the same services by paying a tax of $8.00 per truck a tax of $50.00 merely because the appellant is a non-resident of the State of Mississippi, is discriminatory and rests upon no reasonable basis, and violates the Fourteenth Amendment to the Constitution of the United States.

We present to the court that the judgment of the court below should be reversed.

C. E. Clifton,
Memphis, Tennessee;

W. H. Watkins, Sr.,
P. H. Eager, Jr.,
T. H. Watkins,
Jackson, Mississippi,
Attorneys for Appellant.

APPENDIX I

"(23) Private commercial carrier of property by motor vehicle.—Any person not included in the terms 'common Carrier by motor vehicle' or 'contract carrier by motor vehicle' who or which transports in interstate or intrastate commerce on the public highways of this state by motor vehicle property of which such person is the owner, lessee or bailee, other than for hire, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of any commercial enterprise or distinguished from use of a motor vehicle for transporting produce, not for hire and by the producer thereof, from forest, field or stream to primary markets. Not including, however, taxicabs, passenger busses and drays, operating wholly within the corporate limits of a municipality in this state, or not exceeding four miles beyond the corporate limits of said municipality, and hearses, ambulances, school busses as such, and all motor vehicles defined in sub-section 30."

APPENDIX II

PRIVATE CARRIERS OF PROPERTY

5. On each "private commercial carrier of property" and on each operator of a "dray" as heretofore defined, for each motor vehicle there is hereby levied a tax, according to the following schedule:

For ½ ton carrying capacity and less than ½ ton per annum	$ 12.00
For more than ½ ton, but not more than 1 ton carrying capacity, per annum	15.00
For more than 1 ton, but not more than 1½ tons carrying capacity, per annum	18.00
For more than 1½ tons, but not more than 2 tons carrying capacity, per annum	30.00
For more than 2 tons, but not more than 2½ tons carrying capacity, per annum	48.00

For more than 2½ tons, but not more than 3 tons carrying capacity, per annum	60.00
For more than 3 tons, but not more than 3½ tons carrying capacity, per annum	72.00
For more than 3½ tons, but not more than 4 tons carrying capacity, per annum	84.00
For more than 4 tons, but not more than 4½ tons carrying capacity, per annum	108.00
For more than 4½ tons, but not more than 5 tons carrying capacity, per annum	132.00
For more than 5 tons, but not more than 6 tons carrying capacity, per annum	186.00
For more than 6 tons, but not more than 7 tons carrying capacity, per annum	252.00
For more than 7 tons, but not more than 8 tons carrying capacity, per annum	294.00
For more than 8 tons, but not more than 9 tons carrying capacity, per annum	384.00
For more than 9 tons, but not more than 10 tons carrying capacity, per annum	498.00

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No. 253

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

MEMPHIS STEAM LAUNDRY CLEANER, INC.
Appellant

Vs.

A. H. STONE, CHAIRMAN
STATE TAX COMMISSION
STATE OF MISSISSIPPI
Appellee

BRIEF ON BEHALF OF APPELLEE

J. H. SUMRALL, Attorney for Appellee
Jackson, Mississippi

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STATE TAX COMMISSION
STATE OF MISSISSIPPI
Appellee

BRIEF ON BEHALF OF APPELLEE

STATEMENT OF THE CASE

This case comes to this Court by direct appeal from the Supreme Court of Mississippi, the appeal being taken from the decision of the Supreme Court of Mississippi rendered on June 11, 1951, said decision of the court reversing the judgment of the Circuit Court of the First District of Hinds County, Mississippi, which judgment was rendered by the Circuit Court of the First District of Hinds County, being in favor of the plaintiff, the appellant herein.

The case was begun by the filing of a declaration in the Circuit Court of Hinds County, to which declaration an answer was filed and the case was submitted to the Judge without a jury, and the Judge rendered his opinion in which he held that the representatives of the plaintiff

who solicited wearing apparel from citizens of Mississippi to be laundered and cleaned, were not transient vendors. And, on this holding, a judgment was entered in favor of the plaintiff in the lower court for the amount sued for.

An appeal was perfected by A. H. Stone, as the Commissioner, representing the State of Mississippi, and on appeal to the Supreme Court of Mississippi, the judgment of the lower court was reversed and judgment was rendered in favor of the appellant, the Commissioner, which amounted to a dismissal of the original cause of action at the cost of the plaintiff.

THE FACTS

The appellant, the Memphis Steam Laundry Cleaner, Inc., is a foreign corporation having its principal place of business in the city of Memphis, State of Tennessee.

In order to procure the patronage of citizens of Mississippi, appellant sends its trucks in charge of its employees into the State of Mississippi for the purpose of soliciting articles of clothing to be laundered and cleaned. And since this activity of soliciting such articles falls clearly within the plain language of the Mississippi privilege tax statute, which imposes a tax of $50.00 on the use of each vehicle used in the solicitation and procuring of articles to be laundered and cleaned, and the statute further providing that the tax of $50.00 shall be paid on each vehicle used in the conduct of its business in each county, and the undisputed fact showing that one truck was sent into each of six counties in Mississippi, and two trucks were sent into two other counties of the state, making a total of ten trucks used on which a tax of $50.00 was imposed on the use of each such truck.

The statute in Mississippi imposing the tax having been set out at length in the brief of the appellant and in the opinion of the Supreme Court of Mississippi, appearing on page 11 of the printed record, the statutes are not here restated.

It will be noted from the declaration filed by the appellant in the Circuit Court of Hinds County, Mississippi, the plaintiff relied on three separate contentions in demanding judgment for a refund of the taxes paid were, first; that the plaintiff was not a transient vendor or dealer under the provisions of the act imposing the tax. Second; that the business conducted by the plaintiff was interstate commerce not subject to tax by the State of Mississippi, and Third; that because under Section 110, Chapter 137, Laws of Mississippi of 1944, being a local privilege tax, laundries licensed in Mississippi could send their trucks in municipalities other than that in which the laundry was conducted by the payment of a tax of $8.00 on each truck, whereas, under Chapter 138 of the Mississippi Laws of 1944, the law by which the tax collected was imposed, imposed a tax of $50.00 in favor of the State, then such difference in the amount of taxes demanded by the two laws amounted to an unconstitutional discrimination.

The Supreme Court of Mississippi held (r. 12) that there was no merit in the contention that the appellant was not liable for the tax for the reason that its drivers were not transient vendors or dealers. The Mississippi Court likewise held that there was no discrimination between the two sections of the law, because the Legislature in making this classificatio , which is reasonable, no doubt took into consideration the fac that local laundries were required to pay ad valorem taxes, privilege

taxes, and many other taxes. And the Court further held that the tax involved was not a tax on interstate commerce, but a tax on a person soliciting business for a laundry not licensed in the state, a local activity which applies to nonresidents alike.

ARGUMENT

This case involves the construction of sub-sections (t) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944. Said Section 45 being what is commonly known as a "Transient Vendors Privilege Tax Law". The pertinent parts of the general provisions of said statute are that there is imposed

> "upon each person doing business as a transient vendor or dealer, as defined in this section, upon which a privilege tax is not specifically imposed by another section of this Act, a tax for each county according to the following schedule:"

Every form of merchandise which may become the object of transient sales is divided into classes and a separate and specific amount of tax is imposed for the privilege of selling such commodities, the tax being fixed or graduated according to the conception of the Legislature as to the value of the privilege of selling such articles as transient vendors, or upon certain services which might be rendered by a transient person.

The original privilege tax upon "peddlers" is one of the oldest provisions of the Privilege Tax Law. Its primary purpose is held by the court in some of our earliest decisions to be not only for the protection of persons who might be taken advantage of by unprincipled "slick" salesmen by misrepresenting the value of articles offered for sale and being nonresidents who might never

again visit the scene of such sale, so that responsibility for the failure of such articles or service to measure up to its represented quality might not be enforced.

In order to prevent the uninformed, gullible people from such fraudulent representations of sales or service, the Legislature in the early history of the State undertook to suppress this "nefarious practice" by imposing a high privilege tax on each person engaged in the business of "peddler."

Indeed, in the early cases reported in the Mississippi Reports, there will be found that in addition to the ad-valorem or property tax, privilege taxes were the only other source of public revenue.

For the dual purpose of revenue and protection of the citizens of Mississippi, a privilege tax on "peddlers" or "transient vendors" has always been a matter of concern and strict attention by the Legislature, and has always been one of the revenue measures strictly enforced. The early statutes on the subject of privilege taxes imposed much more severe penalties than are now imposed by similar laws.

In the early history of the Privilege Tax Law of Mississippi, a person who engaged in business without the procurement of a privilege tax license was liable for 100 per cent penalty, subject to criminal prosecution, and upon conviction might be subject to a large fine, as well as imprisonment, and in addition to the civil penalties and criminal prosecution, all contracts made were held to be void.

While the penalties imposed upon persons engaging in any business without the payment of proper privilege tax have been modified to some extent, the provisions

of the Privilege Tax Law are very positive as to the imposition of a penalty for engaging in any business for which a privilege tax has not been paid.

With this background and history of the Privilege Tax Law of this state, it is easier to ascertain the legislative intent which is always a guide to the courts in construing the statute.

This suit was filed for the purpose of obtaining a refund of taxes paid by the plaintiff which admittedly operates no plant in Mississippi, and which admittedly has representatives in the State of Mississippi soliciting clothing to be laundered or cleaned, and paying no taxes of any kind to the State, either on taxable property located in the state, or any other form of taxation for the privilege of the business being conducted. It falls clearly within the plain provisions of Sub-section (t) of Chapter 45 of the Laws of 1944, which sub-section provides that:

> "Upon each person soliciting business for a laundry not licensed in this state as such, in each county . . . $50.00."

Sub-section (y) of said Section 45 also provides:

> "Provided, however, that where any person is subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business."

The plaintiff while admitting that the taxes demanded and paid were in strict accord with the provisions of said two sub-sections quoted, it attacks the constitutionality of said sections solely on the ground that by Sec-

tion 110, Chapter 137, Laws of 1944, the graduated tax imposed on each person operating a laundry and contains a pro viso that:

> "Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located, a tax of $8.00,"

that the imposition of the lower tax by municipalities on the operation of trucks soliciting business in municipalities is only $8.00, whereas the tax imposed by the State on trucks engaged in similar business is $50.00. It being the contention of the plaintiff that the discrepancy in the amount of taxes imposed on representatives of laundries situated in the state, and licensed municipalities, and the amount of tax imposed by the State for soliciting business for laundries not situated within the State, is an unreasonable classification and therefore unconstitutional.

In answer to this contention, it is only necessary to briefly review the decisions of the courts, including our own Mississippi Court. The cases cited are only typical of the uniform holding of the Mississippi Court on the question of the right of the legislature to classify the different occupations for the purpose of taxation. And in addition to this brief reference to the uniform holding of our Court, I refer to some cases selected at random, showing the holding of the courts of other states of the United States in similar cases.

In Jewel Tea Co. v. Troy (1935); C. C. A. 7th 80 F. (2d) 366, it was held that a license tax ordinance which imposed an annual fee for all vehicles used for the storage or carrying of certain specified food products for the purpose of delivering them to any place in the city,

and exempted therefrom any vehicles used to deliver foodstuffs from any establishment licensed as a food dealing establishment in the city, did not establish an unreasonable classification and was consequently not violative of the equal protection clause of the Federal Constitution, the court saying:

> "We are satisfied that vehicle owners delivering foodstuffs in the city and having no habitat therein are, for the purpose of such ordinances, in a class separate and apart from those who have therein permanent places of business."

And in Williams v. Bowling Green (1934) 254 Ky. 11, 70 S. W. (2d) 967, where it appeared that plaintiff who brought suit to enjoin enforcement of an ordinance of defendant municipality, was engaged in the dry cleaning business in the city but contracted for the actual work to be done by a firm maintaining a plant in another city, it was held that the ordinance, which exacted a license fee of $25.00 from persons operating a cleaning and dyeing business within the city, and a fee of $200.00 from persons engaged in the cleaning and dyeing business, without operating a plant in the city, did not create an unreasonable classification, on the theory that plaintiff's business of soliciting orders, assembling the clothes, and transporting them to the plant at which the work was done, was different from the business of actually maintaining a plant for cleaning and dyeing operations.

In St. Helena v. Butterworth (1926) 198 Cal. 230, 244 P. 357, an ordinance providing:

> "Every traveling salesman ... carrying his goods in a wagon, automobile, truck, or other vehicle ... and who does not maintain a fixed place of business within the said town . . shall pay a license tax",

and imposing a tax different in amount upon merchants maintaining a place of business within the city, was upheld, the court saying:

> "The manner in which one may conduct his business, by which he avoids the payment of rent, property tax, and other local burdens, makes it essentially different business from that conducted by regular merchants having a fixed place of business, and is a good reason for discrimination in the matter of fixing the amount of the license tax."

In American Bakeries Co. v. Huntsville (1936) 232 Ala. 612, 168 So. 880, an ordinance imposing a license tax upon itinerant sellers of bakery products and a smaller tax upon dealers in bakery products having a business establishment within the city was held not discriminatory, at least as against an itinerant seller, the Court saying:

> "The provisions of the ordinance imposing a lesser license tax or fee against bakeries having a place of business regularly opened to the public in no wise discriminates against the appellants. Confessedly, they do not fall within this latter class. They have no more just ground of complaint than has an ordinary itinerant dealer, who has paid his license to hawk his articles about the city, the right to complain that the city had imposed a different and lesser license tax upon a local merchant of the city, who sold and delivered his goods and wares to his customers throughout the city. The appellants do not fall within the class of bakers who have a plant within the city, but within the class terms 'itinerants.' Within the purview of this ordinance, the appellants were and are itinerant dealers."

State v. Gulf M. & N. R. R. Co. 104 So. 195, 154 Miss. 155, followed in Lowery v. City of Greenville, 122 So. 98:

"Const. U. S. Amend. 14, does not prohibit reasonable classification of property for purposes of taxation so long as classification rests on difference having reasonable relation to subject of legislation, so that all persons similarly situated are treated alike."

Miller v. Lamar Life Ins. Co. 131 So. 282, 158 Miss. 753:

"Classification for purposes of taxation, if not wholly unreasonable and arbitrary, and statute is uniform in operation, does not deny equal protection of laws guaranteed by Federal Constitution (Const. US. Amend. 14)."

Mississippi State Tax Com. v. Flora Drug Co. 148 So. 373, 167 Miss. 1:

"Equal protection clauses of Federal Constitution does not prevent state from adjusting its system of taxation in reasonable manner, nor compel state to adopt ironclad rule of equal taxation. (Const. U. S. Amend 14)."

"Mere inequalities or exemptions in matter of state taxation are not forbidden by Federal Constitution (Const. U. S. Amend 14)."

Since the contention of the plaintiff in the lower court involves a constitutional question, and the United States Constitution, and the construction thereof being the rule by which all constitutional questions are controlled, I call the attention of the Court to the case of Caskey Baking Co. v. Virginia, 313 US 117, decided by the Supreme Court of the United States, which is conclusive, in my opinion, of the sole question involved. The language of the Court is as follows:

"The appellant, a corporation of West Virginia, has its principal office and place of business in Mar-

tinsburg, in that state. As a foreign corporation registered in Virginia, it has paid the latter State an annual registration fee and an income tax on its net profits allocable to its Virginia business. It makes bread which it sells to grocers and other retailers in territory adjacent to Martinsburg, including Winchester and other places in Virginia. Appellant's trucks carry the bread into Virginia where they serve regular routes at regular intervals. The drivers call only on regular customers, inquire of each how much bread he needs and, in response to his order, take it from the truck and deliver it to the customer. Thus, each such transaction in Virginia is a sale and delivery in that state to a regular customer.

"The company has no property permanently located in Virginia and no place of business in the state, except that, as required by the statute respecting registerd foreign corporations, it maintains an office in the state where claims against it may be audited, settled, and paid.

"The appellant was convicted for making a sale in Virginia without having procured a license pursuant to Sec. 192b1 of the Tax Code of Virginia and a fine was imposed. The Supreme Court of Appeals affirmed the conviction.

"So far as material the statute provides: 'There is hereby imposed an annual State license tax on every person, firm and corporation (other than . . . a manufacturer taxable on capital by this State, or a distributor of manufactured goods paying a State license tax on his purchases) who or which shall peddle goods, wares, or merchandise by selling and delivering the same at the same time to licensed deal-

ers or retailers at other than a definite place of business operated by the seller. Provided, however, this act shall not be construed to apply to wholesale dealers regularly licensed by this State, and who shall at the same time sell and deliver merchandise to retail merchants.' The annual fee is $100 for each vehicle used in the business.

"It is admitted that appellant was not a manufacturer taxable on its capital stock, nor a distributor of manufactured products paying a state license tax on its purchases, nor a licensed wholesale dealer, and did not, therefore, come within any of the classes exempted by the Act.

"In the state courts, and here, the appellant challenged the statute as contravening the commerce clause and the equal protection clause of the Federal Constitution. Its position is that it is doing either an interstate business which the State may not burden by imposing a license tax, or an intrastate business as to which the exaction works a forbidden discrimination. We hold both contentions untenable.

"I. While the transportation of bread across the state line is interstate commerce, that is not the activity which is licensed or taxed. The purely local business of peddling is what the Act hits, and this irrespective of the source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts. The appellant, however, urges that the Act discriminates against interstate commerce by exempting from its operation the privilege of sales by manufacturers paying tax on their capital employed in manufacture in Virginia. It is said that if its bakery

were situate in Virginia the appellant would have the benefit of this exemption and, since it is not, the marketing of appellant's goods shipped into the State is the target of a hostile discrimination. But the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the State, or buy or produce them from extra-state sources, are alike subject to the Act. The contention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions.

"2. Examination of the Tax Code of Virginia discloses that the Act in question is but one portion of a comprehensive scheme of taxation. Manufacturers who sell their own products pay a tax on capital, which the State deems sufficient to cover all their activities, including the vending of the goods. Wholesale merchants who have a fixed place of business pay a license tax measured by a percentage of all their purchases; and if they are also licensed by the town or city in which they have their place of business or, in lieu thereof, are taxed by such town or city on the capital employed in the business, they may sell and deliver at the same time and place anywhere in the State without payment of any additional license tax. Every distributing house, whether operated by a manufacturer or wholesaler, for distributing goods amongst the owner's retail stores, must be licensed and pay the same tax as if it were a wholesaler. Retail merchants and peddlers at retail must be licensed and pay license taxes, — the former a percentage of the value of the purchases and the latter a fixed annual fee. Those who have no

fixed place of business, who peddle their wares only to licensed dealers or retailers at the places of business of the latter, fall into none of the described classes. As the court below points out, were it not for Sec. 192b, such peddlers would be the only vendors in Virginia to escape some form of taxation.

> "Peddlers at wholesale are not entitled to be licensed and taxed on the same basis as other vendors, as respects either form or amount. As we have repeatedly held, the equal protection clause of the Fourteenth Amendment does not prevent a State from classifying for taxation or impose any iron rule of equality. Some occupations may be taxed though others are not. Some may be taxed at one rate, others at a different rate. Classification is not discrimination. It is enough that those in the same class are treated with equality. That is true here."

In the case of Notgrass Drug Co. v. State Ex Rel Rice, Attorney General, reported in 175 Miss. at page 358, the constitutionality of the present Sales Tax Law was attacked on the ground, among other things, that there had been an unconstitutional discrepancy between the amount of tax imposed on different persons. And in answer to this criticism, this Court used the following language:

> "Our duty is to sustain the classification adopted by the Legislature if there are substantial differences between the occupations separately classified. Such differences need not be great."

State Board of Tax Commissioners of Indiana v. Lafayette A. Jackson, 283 US 527, 51 S. Ct. 540, 543, 75 L. Ed. 1248, 73 A. L. R. 1464:

"In imposing the tax here under consideration, the Legislature has the right to classify persons and Commodities subject thereto. 'In its discretion it may tax all, or it may tax one or some, taking care to accord to all in the same class equality of rights.' It may tax dealers who sell at wholesale, and not those who sell the same commodities at retail, or it may tax dealers who sell the same commodities, and not tax those selling other and different commodities.

Southwestern Oil Co. v. Texas, 21 US 114, 30 S. Ct. 496, 498, 54 L. Ed. 688; and Cook v. Marshall County, 196 US 261, 25 S. Ct. 233, 49 L. Ed. 471.

"It may be that the difference between wholesalers and retailers, in this connection, is not great, and is not apparent on the surface; nevertheless that court which ultimately determines the power of the Legislature in this connection has said that the classificiation can be made, and our legislative history discloses that it is the custom of Legislatures to make such."

Since the principal attack made on the statute involved by the plaintiff in the lower court is the unconstitutionality of said statute by reason of the discrimination claimed, I respectfully call the Court's attention to the following Mississippi cases, which appear on this subject:

"The legislature has a wide discretion in making the classification for legislative purposes. Huggins v. Home Mut. Fire Ins. Co. 65 So. 646, 107 Miss. 650.

"Const. Amend. U. S. 14, does not prohibit reasonable classification of property for purposes of taxation so long as classification rests on difference having reasonable relation to subject of legislation, so

that all persons similarly situated are treated alike. State v. Gulf M.N. R. Co., 104 So. 689, 138 Miss. 70.

"Classification for purposes of taxation if not wholly unreasonable and arbitrary, and statute is uniform in operation, does not deny equal protection of laws guaranteed by Federal Constitution (Const. US Amend. 14). Miller v. Lamar Life Ins. Co. 131 So. 282, 158 Miss. 753.

"Equal protection clause of Federal Constitution does not prevent state from adjusting its system of taxation in reasonable manner, nor compel state to adopt ironclad rule of equal taxation. (Const. US Amend. 14) Mississippi State Tax Com. v. Flora Drug Co., 148 So. 373, 167 Miss. 1.

"Mere inequalities or exemptions in matter of state taxation are not forbidden by Federal Constitution (Const. US Amend. 14) — Miss. State Tax Com. v. Flora Drug Co. 148 So. 373, 167 Miss. 1.

"The question of classification is primarily for Legisltaure and can never become a judicial question except for the purpose of determining whether legislative action is clearly unreasonable, and when classification is called in question, if any state of facts reasonably can be conceived that would sustain it, existence of that state of facts at time law was enacted must be assumed and courts cannot require the Legislature to specify its reasons for classification, but will always presume that Legislature acted on legitimate grounds of distinction, if such grounds exist. Russell Inv. Corp. v. Russell, 182 So. 102, 182 Miss. 385, setting aside 178 So. 815, 182 Miss. 385.

"One who assails classification in a statute must carry the burden of showing that it does not rest on any reasonable basis.

"'It is presumed that legislature in making discriminations in classifications in statutes bases them on adequate grounds. U. S. C. A. Const. Amend. 14 Sec.

"In determining whether statutes enacted by Legislature transcend limits imposed by Federal and State Constitutions, courts should proceed with greatest possible caution and should never declare a statute void unless its invalidity is shown beyond reasonable doubt.

"Courts should adopt construction of statute that will bring it into harmony with Constitution by restricting its application to legitimate field of legislation, whenever necessary in order to uphold its constitutionality and carry its provisions into effect.

"Every intendment in favor of constitutionality unless repugnancy of statute to Constitution clearly appears or is made to appear beyond reasonable doubt.

"In determining constitutionality of statute, it will be presumed that Legislature has considered effect of statute on constitutional rights of the citizen and that Legislature acted from patriotic and just motives and with a desire to promote public good.

"'When a classification in a statute is questioned, courts will presume that Legislature acted on legitimate grounds of distinction, if any state of facts reasonably can be conceived that would sustain clas-

sifications, even if reasons are not obvious. Stone v. General Elec. Contr. Corp. 7 So. 2d, 811, 193 Miss. 317 followed in Stone v. Universal Credit Co., 7 So. 2d, 820, 193 Miss. affirmed Universal Credit Co. v. Stone, 63 S. Ct. 66, 317 US 591, 87 L. Ed. 484, followed in Stone v. Yellow Mfg. Acceptanc. Corp. 7 So 2d, 820, 193 Miss., 338, affirmed Yellow Mfg. Ac. Cor. v. Stone, 63 S. Ct. 66, 317 US 591, 87 US L. Ed. 484, rehearing denied 63 S. Ct. 157, 317 US 708, 87 L. Ed. 565.

"Every reasonable doubt should be resolved in favor of constitutionality of a statute. — State v. Rosell, So. 2d, 867, 192 Miss. 873.

"A statute should be construed if reasonably possible so as to avoid rendereing it unconstitutional or seriously endangering its constitutionality.

"Where a statute is capable of two constructions, one of which would render it invalid and the other valid, the construction which upholds its validity must be adopted.

"All presumptions should be indulged in favor of validity of a statute, and such a construction should be given to it, if possible, as will uphold it, and its unconstitutionality must appear beyond a reasonable doubt before it will be held to be invalid. California Co. v. State Oil & Gas Board, 27 So. 2d. 542, 200 Miss. 824, followed in 27 So. 2d. 548, 200 Miss. 849, suggestion of error overruled 28 So. 2d. 120, 200 Miss. 824.

"A statute will not be held unconstitutional unless clearly so. — Gabriel v. Brame, 28 So. 2d. 581, 200 Miss. 767."

SERVICE RENDERED BY A LAUNDRY OR CLEANER IS DIFFERENT IN ITS NATURE FROM MANY OF THE ACTIVITIES TAXED BY SO-CALLED "TRANSIENT VENDOR" SECTION OF THE PRIVILEGE TAX LAW.

In the case of Campbell Cleaning & Dye Works v. Porter, reported in 183 SW 2d 249, the Court of Civil Appeals of Texas defined the term "laundry" as follows:

> "Whatever may be the etymological derivation of the word, in the social and domestic life of today the popular and ordinary meaning of the term 'laundry,' used in connection with the word 'public,' is that of a place to which the public are invited to deliver soiled clothes to be washed, dried, starched, ironed, and subjected to the processes ordinarily employed to render soiled clothes suitable for further use.
>
> "Webster defines 'Dry-clean' to mean 'To cleanse (a garment) with gasoline, benzine or the like.
>
> "We think, under the proof, the findings of the court and the definitions, the work performed was in a laundry and hence within the statute. It need not be determined, and we do not determine, the place was exclusively a dry cleaning or dyeing establishment. We are of the opinion it cannot be said it is not a laundry. Furthermore, we regard it a matter of common knowledge that modern laundries, as a rule, do dry cleaning and pressing as a part of their laundry service."

It is also a matter of common knowledge that modern laundries have adopted the common practice of having their solicitors or representatives collect at the place of

residence or place of business of its potential customers and pick up or receive the articles to be cleaned or laundered. And to return such articles when cleaned to the place where received and collect the charge made for the service rendered.

The patrons, or owners of such articles are not concerned with, nor informed, as to where the actual cleaning or laundering is performed. The owner or customer of such articles only knows that the agent or representative calling on the customer receives the articles to be laundered or cleaned at the residence or place of business of the owner and returns the cleaned articles to the same place.

If, as in some instances, there is operated what is commonly called a "Cash and Carry" place of business, the owner of the articles to be cleaned carries such articles to some designated office or "receiving station" and calls for the articles at a designated time and receives same after the service has been rendered thereon. The owner of the articles does not know or care whether the articles to be washed or cleaned are serviced at the place where such articles are delivered by him, or whether they are sent to a plant located in another part of the city, or sent out of the state to be cleaned or laundered. Indeed, it is the service of cleaning or washing the article that the owner pays for, without reference to where the articles are actually washed or cleaned.

It is a matter of common knowledge that many persons offering cleaning and laundry service to the public have no plant or place of business, except a truck or other vehicle into which the articles are received, and by which such articles are delivered to the owner after the service of cleaning or washing has been performed.

It is a matter of common knowledge, and therefore well known to the general public that there is at least one laundry in the City of Jackson, Mississippi, which although long established, lost all of its machinery from its plant, but has continued to give service to its former customers through the medium of sending its trucks to the places where the articles are owned, picking up such articles and delivering same to the owner after the actual cleaning or laundering has been procured to be done at some other plant in the city.

It will be noted that the provision of the law under which the tax involved was demanded is a part of Section 45, Chapter 138, Laws of 1944, and the several taxes defined and imposed by said section apply only to activities "on which a priviledge tax is not specifically imposed by another section of the act".

Section 110 of Chapter 137 of the Laws of 1944, being the general privilege tax law which is now collected only by municipalities and counties imposes a graduated tax on each person operating a laundry, the tax being graduated according to the size of the municipality in which the laundry is operated. It will be noted that there is no reference made to a plant of any kind, the tax being graduated according to the potential business indicated by the size of the municipality in which the business is conducted.

It will also be noted that the language of the subsection imposing the tax on the solicitor for a laundry, limits the application of the tax to soliciting business "for a laundry not licensed in this state as such". And the construction of said subsection in connection with the provisions of Section 110, Chapter 137, Laws of 1944 has uniformly been that where a nonresident operator of a

laundry or cleaner establishes an office or "receiving station" within the state, and pays the local laundry license according to the graduated tax imposed in accordance with the size of the municipality in which such office or receiving station is operated, that such nonresident owner of such place of business would not be required to pay the $50.00 on each truck imposed on solicitors of laundry and cleaning for laundries not licensed in the state, and would only be required to pay the tax of $8.00 for each municipality in which the cleaning and laundrying was solicited, other than the one in which the laundry was licensed.

I therefore sincerely urge that inasmuch as the Courts have uniformly held that persons engaged in any transient business would be the ones liable for the tax imposed under the Transient Vendor section; and said section further providing that "Provided further, that the Commissioner shall issue transient vendor licenses in the name of the agent who operates the vehicle from which the merchandise is sold and delivered", and "Every vehicle used by an individual (except a person specifically exempted) subject to the provisions of this section, must have conspicuously displayed thereon the name of the person using same and his business address", it is apparent that the license demanded on which the tax was paid was properly demanded in connection only with the representatives of the company because of its operation within the state in rendering service to the owners of articles to be cleaned or laundered.

The attention of the Court is called specifically to the fact that in the session of the legislature of 1944, the legislature divided the privilege tax code into two separate classes. The privileges designated as "State Taxes"

previously collected by the sheriffs of the several counties for the benfit of the state, were included in Chapter 137 of the Laws of 1944, and the state surrendered its right to have any of said taxes collected for its benefit. It allowed by said act any municipality or county which adopted an ordinance or an order adopting such chapter as its privilege tax code, to have the exclusive right to collect such taxes on the privileges therein enumerated.

Those privileges which had been designated in the general privilege tax code previously as "Statewide Taxes" were included in Chapter 138 of the Laws of 1944, and the authority to collect taxes on the privileges therein enumerated was confined to the State Tax Commissioner or the Insurance Commissioner.

In order to emphasize the complete separation of the two classes of privileges taxed and confine the right of collection of each class to the respective authorities, Section 3 of Chapter 137, Laws of 1944 requires persons desiring to exercise any privilege taxed by said chapter to procure from the tax collector of the county or municipality, as the case may be, a license for the several privileges enumerated in said chapter; and Section 227 of said chapter provides as follows:

> "The privileges taxed by this act shall not be subject to taxation for a greater extent than is permitted by the sections of this act, either by the board of supervisors of any county or by any municipality, and no municipality or county shall levy any tax on any privilege which has been duly licensed for statewide purposes."

Section 70 of Chapter 138, Laws of Mississippi for 1944, the chapter covering "State-Wide Taxes," in which

Section 45, the transient vendor section is included, provides as follows:

> "Sec. 70. The privileges taxed by this act shall not be taxed by the board of supervisors of any county; nor by any municipalities except as may be herein provided."

It will thus be seen that the two classes of privilege taxes which attorneys for the appellant compare in their argument as unconstitutional discrimination, are separate and distinct. And do not apply to the same activity. The language of Section 70 just quoted expressly prohibits municipalities and counties from taxing any activity covered by Chapter 138 of the law; and the tax of $8.00 imposed and to be collected by municipalities is imposed only on persons representing local laundries taxed and licensed under the provisions of Section 110, Chapter 137 of the Laws of 1944, and such activity could not be taxed by Section 45, Chapter 138, Laws of 1944 because of the provision therein: "upon which a privilege tax is not specifically imposed by another section of this act."

THE AUTHORITIES CITED BY ATTORNEYS FOR THE APPELLANT

I have no quarrel with the authorities cited in the brief of the attorneys for the appellant with reference to the fact that a state may not tax interstate commerce. But, I respectfully submit that the activities engaged in by the appellant were not in interstate commerce. The activity for which the tax in question was imposed is strictly local, in that the soliciting of wearing apparel to be laundered and cleaned, which apparel is procured from the owner within the state, and the return of said articles

when laundered and cleaned to the owner, is merely a local service rendered by the drivers of the vehicles in accepting articles to be laundered and cleaned and returning same to the owner at the exact place where such articles were received.

The three cases cited by the attorneys for the appellant on the question of whether or not the soliciting of articles of wearing apparel to be laundered and cleaned constitutes the operation of a laundry, are not in support of the contention made by the attorneys for the appellant, which contention is sought to be sustained by the citation of the cases mentioned.

In the case of Kansas City v. Seaman, 160 Pac. 1139, an ordinance of the municipality imposed a tax on laundries and the court held that the mere fact that clothing was gathered up to be laundered and distributed, did not amount to conducting a laundry in the city in contemplation of the law imposing the tax on the operation of a laundry. The Court further holding that the only part of the activity which amounted to interstate commerce was the transmission of the articles across state lines, which activity was not taxed by the provisions of the law.

Another case, Commonwealth v. Pearl Laundry Company, 105 Ky. 259, is a case where a municipal ordinance imposed a tax on the operation of a laundry and the Court held that the mere gathering up of clothing to be laundered did not constitute the operation of a laundry in contemplation of the ordinance imposing a tax on the operation of a laundry.

I therefore respectfully submit that the mere fact that the local solicitors may have transmitted the articles of clothing across the state line to have same laundered and

cleaned, was not a part of the activity taxed by the law in question. A solicitor of wearing apparel to be laundered and cleaned, who did not solicit such work for a laundry licensed in Mississippi, would be liable for the tax, without reference to the residence of such person. The activity being taxed is uniform in that all persons engaged in a similar activity are taxed on the same basis. The same contention was made in the brief of the appellant before the Supreme Court of Mississippi. And the Supreme Court of Mississippi, in its opinion, used the following language which appears on page 14 of the record:

> "This tax does not violate the Fourteenth Amendment of the Constitution of the United States or the Fourteenth Amendment of the Constitution of the State of Mississippi."

The further contention of the appellant which was made before the Supreme Court of Mississippi was answered by said court in the following language, as appears on page 12 of the record:

> "We are of the opinion that there is no merit in the contention that the appellee is not liable for the tax for the reason that its drivers are not transient vendors but dealers."

I therefore respectfully submit that under the holding of the Supreme Court of Mississippi, all of the questions raised by the appellant in its brief have been answered by the Supreme Court of Mississippi contrary to the contention of the attorneys for the appellant, and as held by this Court in the case of General Trading Co. v. State Tax Commission of Iowa, 322 US 335:

> "The application by that Court of its local laws and the facts on which it founded its judgment are of course controlling here."

The same principle has been announced by this Court in many other cases, and the fact that the Mississippi Court has definitely decided under the facts and the law of Mississippi that interstate commerce is not involved, neither do the provisions of said act violate the commerce clause or any other provision of the Constitution of the United States, nor of the Constitution of the State of Mississippi, this Court will recognize the paramount right of the Supreme Court of Mississippi to construe its own laws under the facts and conditions which were fully presented and considered by said Court, but answered contrary to the contention of the appellant.

CONCLUSION

I therefore specifically submit:

1. That the taxes sued for were collected in strict compliance with the law imposing the tax.

2. That there is no unconstitutional discrimination involved under the facts in this case, since the necessary status of the appellant, not being licensed within the state, will prohibit the application of the law as imposed under the provisions of Section 110, Chapter 137.

3. Section 45, Chapter 138, Laws of 1944, specifically imposed the tax collected, because said taxpayer had not qualified under the provisions of said Section 110, Chapter 137, Laws of 1944.

It is therefore urged that the decision of the Supreme Court of Mississippi in this case was eminently correct and that said judgment should be affirmed by this Court.

Respectfully Submitted:

J. H. Ermann

Attorney for Appellee

CERTIFICATE

I, J. H. Sumrall, attorney of record for the appellee, do hereby certify that I have this day forwarded, by United States Mail, postage prepaid, to Messrs. Watkins & Eager, Jackson, Mississippi, and Mr. C. E. Clifton, Memphis, Tennessee, attorneys for appellant, true copies of this brief.

This the 23rd day of November, 1951.

J. H. Sumrall

Attorney for Appellee